

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 22, Original.

THE STATE OF GEORGIA

vs.

THE STATE OF SOUTH CAROLINA.

REPORT OF SPECIAL MASTER.

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a In the Supreme Court of the United States.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA.

TESTIMONY AND EXHIBITS.

Mr. Charles S. Douglas, Special Master.

b Supreme Court of the United States, October Term, 1919.

No. 22, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA.

On consideration of the motion for the appointment of a Special Master to take such testimony as may be necessary and to receive in evidence such exhibits as may be offered by the parties hereto.

It is now here ordered by the court that the said motion be, and the same is hereby, granted, and, on the suggestion of counsel for both parties, Mr. Charles S. Douglas, of Washington, D. C., is appointed as such Special Master and directed to report the testimony and exhibits to the Court without conclusions of law or findings of fact on or before Monday, October 4, 1920.

June 7, 1920.

A true copy.

[Seal of the Supreme Court of the United States.]

Test:

JAMES D. MAHER,

Clerk of the Supreme Court of the United States.

1 Supreme Court of the United States, October Term, 1919.
No. 22, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA, Respondent.

Office of Douglas, Obear & Douglas,
Southern Building, Washington, D. C.,
Monday, October 18, 1920.

The parties met pursuant to the above order of the Supreme Court of the United States, at the office of Douglas, Obear & Douglas, Southern Building, Washington, D. C., at 3:30 o'clock p. m. on the above date.

Present, the Special Master, Mr. Charles S. Douglas.

Present, on behalf of the complainant, Honorable R. A. Denny, Attorney General of the State of Georgia.

Present, on behalf of the respondent, Honorable Samuel M. Wolfe, Attorney General of the State of South Carolina.

Petition for Leave to File Original Bill in Chancery.

2 (On the cover page of the petition referred to appears the following:)

In the Supreme Court of the United States, October Term, 1918.

No. 32, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA, Respondent.

Petition for Leave to File Original Bill in Chancery.

Clifford Walker, Attorney-General, Atlanta, Georgia, Thomas F. Green, Athens, Georgia, Counsel for Complainant.

(Following the cover page of the petition referred to appears the following:)

In the Supreme Court of the United States.

No. —, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA, Respondent.

3 Comes now the complainant in the above entitled cause,
the State of Georgia, by the Attorney-General, Clifford
Walker, and Thomas F. Green, of counsel, and respectfully
asks leave to file the original bill in chancery hereto attached.

THE STATE OF GEORGIA,

By CLIFFORD WALKER,

Attorney-General of Georgia.

THOS. F. GREEN,

Of Counsel.

4 *Original Bill in Chancery.*

(On the cover page appears the following:)

In the Supreme Court of the United States, October Term, 1919.

No. —, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA, Respondent.

Original Bill in Chancery.

Clifford Walker, Attorney-General, Atlanta, Georgia; Thomas F.
Green, Athens, Georgia, Counsel for Complainant.

(Following the cover page appears the following:)

Supreme Court of the United States, October Term, 1918.

No. —.

THE STATE OF GEORGIA

vs.

THE STATE OF SOUTH CAROLINA.

Original Bill in Chancery.

Bill of Complaint.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Georgia, one of the United States of America, by and through its Governor, the Honorable Hugh M. Dorsey, brings this its bill of complaint against the State of South Carolina, also one of the United States of America, and complains and says as follows:

I.

That the leave of this Honorable Court has been first given, to the State of Georgia to file this its complaint against the respondent in this case, the State of South Carolina.

II.

That on August 21st, 1917, the legislative branch of the State of Georgia passed the following resolution:

"Whereas, Serious dispute exists as to boundary between the States of Georgia and South Carolina along the Savannah and Tugalo rivers, all the way from the mouth of said Savannah river to the head of the Tugalo river at the junction of the Keowee and Chattooga rivers, and on to the North Carolina line, and,

6 Whereas, Public policy as affecting the people of both States and the rights of Georgia require that all doubt or cloud as to the jurisdiction, or law enforcement, or title, or taxing power, or franchises, touching localities in question, and boundary between the two States should be, without delay, cleared away, correctly adjudicated and finally settled;

Therefore, Resolved, That His Excellency, the Governor, be and he is hereby authorized and requested to institute a suit, or suits, in the Supreme Court of the United States, by and in the name of the State of Georgia, against the State of South Carolina for establishing the claim and boundary of Georgia to and including the entire

bed of said Savannah and Tugalo rivers in their entire lengths, islands and all, clear over to the South Carolina shore, at the ordinary mean water level of said rivers; and to prosecute for and recover the same wherever any adverse occupancy does or may exist."

This suit is now filed by the Governor of Georgia in conformity with the aforesaid resolution.

III.

Your orator shows that Charles the Second, King of Great Britain, by charter dated March 24th, 1663, in the fifteenth year of his reign, granted to eight persons as therein named, as lords, proprietors thereof, all the lands lying and being within his dominions of America between thirty-one and thirty-six degrees of South latitude, in a direct West line to the South seas, styling the lands
7 so described "the province of Carolina;" that on the thirtieth day of June, 1665, in the seventeenth year of his reign, the said King granted to the said Lords, proprietors a second charter, enlarging the bounds of Carolina, viz., from twenty-nine degrees of North latitude to thirty-six degrees, thirty minutes, and from those points on the sea coast West in a direct line to the South seas; that seven of the said proprietors of Carolina sold and surrendered to George the Second, late King of Great Britain, all their title and interest in the said province, and the share of the remaining proprietor was separated from the King's, and allotted to him in the North part of North Carolina; that Carolina was afterwards, about 1700, divided into provinces, called North and South Carolina.

IV.

Although the proprietors named re-deeded the territories above described to George the Second, King of Great Britain, the above colony of South Carolina was nevertheless established under what was known as a royal grant as distinguished from a proprietary grant. Under the former grant the right of the soil and the jurisdiction over the territory remained in the crown, and the boundaries, though described in letters patent, were subject to alteration at the pleasure of the Crown. South Carolina then under the grants and in the manner described in paragraph III of this bill held and enjoyed considerable territories in America until the year 1732.

V.

That on June 9th, 1732, George the Second, "by the Grace of God, of Great Britain, France and Ireland, King, defender of the
8 faith," in the fifth year of his reign, issued certain letters patent to "our right, trusty and well beloved John, Lord Viscount Percival, of our Kingdom of Ireland, our trusty, and well beloved Edward Digby, George Carpenter, James Oglethorpe," and

others who should be known by the name of "the Trustees for establishing the colony of Georgia in America."

VI.

Under these letters patent and under the authority still resting in King George the Second, a portion of what was originally the colony of South Carolina was taken from this colony and became from that time and ever more the "lands, country and territories" of the new colony of Georgia, with the exception of such territory as was subsequently granted by the State of Georgia to the United States of America, and which "lands, country and territories" so subsequently granted is not involved in this complaint.

VII.

Your orator further shows that under said letters patent certain territory was granted to the province of Georgia, the terms of said grant being shown in the following language taken literally and accurately from said letters:

"Do give and grant to the said corporation, and their successors — of all those lands, country and territories situate, lying and being in that part of South Carolina, in America, which lies from the most northern part of a stream or river there, commonly called the Savannah, all along the sea coast to the Southward to the southern stream of a certain other great water or river called the Altamaha, and westwardly from the heads of the said rivers respectively in direct lines to the South Seas —."

VIII.

That under these letters patent from King George the Second, the new colony of Georgia was established and the northern part of that stream or river, known as the Savannah, was made the northern, or rather the eastern boundary of the colony of Georgia, and the southern, or rather the western boundary of the older colony of South Carolina. The colony of Georgia then went into possession of all these "lands, country and territories" and enjoyed and exercised, notoriously and adversely, control and jurisdiction over them, including the Savannah river to the northern or eastern side of said river, which was the northern or eastern bank thereof.

IX.

That this situation so continued until what was known as the War of the Revolution when what were known as the thirteen original colonies, by force of arms, separated themselves from the mother country, England, and later became under the articles of Confederation, The United States of America. South Carolina and Georgia then, as new and independent states, retained all of the territory which they held, owned and enjoyed under grants from the Crown

of England, except such territories as they subsequently deeded to the United States Government and which territory is not involved in this complaint. It is, therefore, alleged that, after the independence of the United States of America had been established and recognized, the Northern part of that stream or river known as the Savannah became the eastern boundary of the State of Georgia and the western boundary of the State of South Carolina. Georgia then as a state continued to hold peaceably, notoriously and adversely all that territory enjoyed as a colony and claimed and exercised control and jurisdiction over the soil to the northern or eastern bank of the river Savannah.

X.

Your orator further shows that the uppermost or the northern branch of the Savannah River at the confluence of this river with what is known as the Seneca River, formerly known as the Keowee River, is known as the Tugalo River, which latter river in its upper passages above the point of its confluence with the Tallulah River, is known as the Chattooga River, which latter river touches the North Carolina line at a well established point.

XI.

Your orator further avers that whereas that stream whose northern part was designated as the boundary line between South Carolina and Georgia was referred to as the Savannah, this stream is composed of the streams heretofore mentioned, the Chattooga, Tugalo and Savannah Rivers, respectively, running from the North Carolina line down between Georgia and South Carolina until the waters are emptied into the Atlantic Ocean and that these streams are the streams meant and referred to in the original letters patent heretofore described, and that the northern or eastern part of these three streams respectively constitute the eastern boundary line of the State of Georgia as it has always existed since 1732 and so exists today.

XII.

That when the northern or eastern part of a stream is referred to or designated such language clearly means the northern or eastern bank of said stream and within such stream would be included the entire bed of said stream, including all islands, and all the waters flowing therethrough, thus making the eastern boundary of any territory adjacent to such a boundary line extend to the eastern bank of said stream at the ordinary mean water level of said stream.

XIII.

Your orator also shows that the exact boundary line between South Carolina and Georgia has always been an important question and is

now becoming much more important. This stream dividing South Carolina and Georgia, particularly in its lower branches, is a large volume of water, containing many large valuable islands and there have been built in and across said streams various large dams of masonry in and upon which dams have been placed and erected machinery of considerable value. This development will continue to grow and this boundary stream has now and will have in the future placed within its waters large and valuable properties. It is, therefore, of the greatest importance to Georgia that this boundary line may be fixed and determined for all time. The question of taxation is a necessary and valuable right to any sovereign state and this question has already arisen and will continue to arise, corporations who own property within the waters of this river have claimed and will continue to claim that their properties are situated in South Carolina, if it suits their interest so to claim.

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XIV.

Crimes have been committed and doubtless will be committed in the future upon the waters of this river and alleged criminals will claim that the act was committed either within the jurisdiction of Georgia or within the jurisdiction of South Carolina as it may suit their necessities.

XV.

South Carolina has claimed and will doubtless claim in the future that certain properties on this river are within the territory and jurisdiction of the State of South Carolina and that certain crimes have been committed upon the territory and within the jurisdiction of its sovereignty. At this present time the State of South Carolina is in possession of certain territory of Georgia in the Savannah river and is attempting to exercise control, jurisdiction and the right of taxation over a portion of this river, claiming this right to the middle or thread of the stream, and is levying a tax on the property of The Georgia Railway & Power Company, a Georgia corporation, which has built valuable properties within this river. Georgia, on other hand, says that these improvements are within its territory and demands that taxes be paid to it. It is, therefore, very necessary that this boundary question be settled by this Honorable Court.

13

XVI.

It is apparent that this question has arisen repeatedly in the past and will continue to arise in the future, and that, therefore, a multiplicity of suits will result and for this reason, if for no other, the boundary line between Georgia and South Carolina should be permanently and authoritatively settled.

Wherefore, Your orator, being remediless in the ordinary tribunals of the land, brings this, its bill of complaint, in this court and specially waiving an answer under oath prays:

(1) That beginning at the North Carolina line it may be decreed by this court that the eastern boundary of the State of Georgia is the northern or eastern bank of the rivers Chattooga, Tugalo and Savannah at the ordinary mean water level of these rivers on their eastern banks.

(2) That your orator may have such other and further relief as the necessities of its case and the principles of equity demand.

(3) That the most gracious writ of subpoena directed to the State of South Carolina and to Hon. Robert A. Cooper, the Governor of said State, and to Hon. Sam'l H. Wolf, the Attorney-General of said State, may issue commanding them and each of them to be and appear in this Honorable Court on a day to be therein named and to abide the judgment of this court.

CLIFFORD WALKER,
Attorney-General of Georgia.

Post Office Address:
Atlanta, Georgia.

THOMAS F. GREEN,
MAX MICHAEL,
Of Counsel.

14

Post Office Address:
Athens, Georgia.

STATE OF GEORGIA,
County of Fulton:

Personally came before me, the undersigned, an officer of said state, authorized to administer oaths, Hugh M. Dorsey, who on oath says that he is the Governor of Georgia, and that he has read the foregoing bill and is familiar with the contents thereof and that the same is true to the best of his knowledge, information and belief.

HUGH M. DORSEY.

Sworn to and subscribed before me, this 28 day of Feb., 1919.

W. B. HARRISON,
N. P., State at Large.

Answer.

(On the cover page appears the following:)

In the Supreme Court of the United States, October Term, 1919.

No. 32, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA, Respondent.

15

Answer to Original Bill in Chancery.

Samuel M. Wolfe, Attorney General, for the State of South Carolina, Defendant.

Clifford Walker, Attorney General, Atlanta, Georgia; Thomas F. Green, Athens, Georgia, Counsel for Complainant.

(Following the cover page appears the following:)

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No. 32, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA, Respondent.

Answer to Original Bill in Chancery.

Samuel M. Wolfe, Attorney General, for the State of South Carolina, Defendant.

Clifford Walker, Attorney General, Atlanta, Georgia; Thomas F. Green, Athens, Georgia, Counsel for Complainant.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of South Carolina, one of the United States of America, pursuant to subpoena issuing from said honorable Court, to the Bill in Chancery, exhibited against said State on and in behalf of the State of Georgia, also one of the United States of America, by the Honorable Hugh M. Dorsey, Governor, and
 16 the Honorable Clifford Walker, Attorney General, saving at all times hereafter to herself, the said State of South Carolina, all manner of benefits of exception or otherwise that can or may be had or taken to such errors, uncertainties or imperfections

as may exist in said Bill of Complaint, to so much thereof as defendant deems material, by his Excellency, Robert A. Cooper, Governor, and Samuel M. Wolfe, Attorney General, of said State of South Carolina, respondent, is as follows:

1. That the defendant has no knowledge or belief other than that based upon the allegation therein contained, and therefore for the purposes of this action, denies the allegations in paragraph One of the complaint.

2. That the defendant has no knowledge or belief other than that based upon the allegations therein contained, and therefore for the purposes of this action, denies the allegations in paragraph Two of the complaint.

3. That in substance defendant admits the allegations of paragraph Three of the complaint, with the following modifications:

That Charles the Second, King of Great Britain, on the thirtieth day of June, in the seventeenth year of his reign, granted to certain Lords-Proprietors therein named, their heirs and assigns, all that territory, or tract of ground situate in North America extending

17 north and eastward as far as the north end of Carahutuke River or gullet, upon a straight westerly line to Wyonoahe

Creek, which lies within or about the degrees of thirty-six and thirty minutes Northern latitude, and westerly in a direct line as far as the South Seas; and south and westward as far as the twenty-ninth degree of North latitude, inclusive; thence west, in a direct line to the South Seas, which territory was entered upon and taken possession of by the said Lords-Proprietors and called Carolina. That said grant carried with it all intervening territory whatsoever together with all ports, harbors, bays, rivers, soil, fields, woods, lakes, rights and privileges therein named.

That thereafter a portion of the aforesaid territory beyond the thirty-fifth degree of North latitude was allotted to one of the eight Lords-Proprietors, and that portion remaining south and westerly as aforesaid, of said parallel of North latitude was retained by the seven remaining Lords-Proprietors absolutely and in 1729, the two provinces thus separated, were designated as North Carolina and South Carolina respectively.

Otherwise said allegations are specifically denied.

4. That defendant admits allegations in paragraph Four of the complaint, with the following modifications:

On the 26th day of July, in the third year of the reign of George the Second, King of Great Britain, and in the year of our Lord 1729, the heirs and legal representatives of all the said remaining seven grantees in conformity with an Act of Parliament entitled An Act for establishing an agreement with seven of the Lords-Proprietors of Carolina for the surrender of their title and interest in

18 that province, to his Majesty, for and in consideration of the sum of twenty-two thousand, five hundred pounds, paid to said heirs by the agent of said king, sold and surrendered to his

Majesty all their right of soil and privileges incident thereto, and made deed of indenture thereto which was duly enrolled in the Chancery of Great Britain and there remains in the Chapel of the Rolls. That afterward, his said Majesty, George the Second, appointed Robert Johnson, Esqr., to be Governor of the province of South Carolina, by commission under the Great Seal of the kingdom of Great Britain, authorizing the said Governor Johnson to grant lands within the said province.

That pursuant thereto, the said Governor Johnson asserted his jurisdiction over such area of territory as was included in the grant by King Charles the Second to the aforesaid Lords-Proprietors.

That saving and excepting with these modifications, the allegations therein contained are specifically denied.

5. That defendant admits the allegations contained in paragraph Five of the complaint, with the following modifications:

That afterwards, the Right Honorable Viscount Percival, the Honorable Edward Digby, the Honorable George Carpenter, James Oglethorpe, Esqr., with others, petitioned the lords of the committee of his Majesty's privy council for a grant of lands in South Carolina, for the charitable purpose of transporting necessitous persons and families from London to that province, there by

19 their industry, to procure a livelihood, and for this purpose to be incorporated. That the lords of the said privy council referred the said petition to the board of trade, so called, of Great Britain, who on the 17th day of December, A. D. 1730, made report thereon and recommended that his Majesty would be pleased to incorporate the said petitioners as a charitable society and further recommended that his Majesty be pleased to grant said petitioners and their successors forever, "all that tract of land in his province of South Carolina lying between the Rivers Savannah and Alatomaha, to be bounded by the most navigable and largest branches of the Savannah, and the most southerly branch of the Alatomaha," and that they should be separated from the colony of South Carolina and be made independent thereof, save only in command of their militia. And that pursuant thereto, his Majesty, George the Second, did incorporate the said Lord Viscount Percival and others by the name of "The Trustees for establishing the Colony of Georgia, in America, with perpetual succession."

That saving and excepting with these modifications, the allegations of said paragraph are specifically denied.

6. That with the following modifications and addenda, the allegations of paragraph Six are admitted:

That defendant alleges that the cession on the part of Georgia of a certain portion of that territory acquired under the letters-patent referred to in paragraph five herein, involved such territory as was prior to the Beaufort convention, a subject of controversy

20 between the said State of Georgia and the State of South Carolina, and that the boundary line governing in said cession on the east, was that fixed by said convention, and to this extent such matter is one pertinent to this action.

7. Defendant herein denies such allegations contained in paragraph Seven of the complaint as purports to be a "literal and accurate" transcript of said letters-patent, it being submitted that the language of said grant does not describe the lands, country and territory passing as that which lies "from the most northern part of a stream or river, etc." but on the contrary the descriptive language of said grant literally and correctly transcribed is: "* * * seven undivided parts (the whole into eight equal parts to be divided) of all those lands, countries, territories situate, lying and being in that part of South Carolina in America which lies from the most northern stream of a river there commonly called the Savannah; all along the seacoast to the southward unto the most southern stream of a certain other great water or river called the Altamaha, and westward from the heads of the said rivers respectively, in direct lines, to the South Seas, and all that spare circuit and precinct of land lying within said boundaries, etc., etc."

8. And answering allegations contained in paragraph Eight of the complaint, defendant respectfully shows that it was from the territory outlined in the foregoing paragraph rather than that purporting to be described in paragraph eight of the complaint, that the province of Georgia was established. And defendant
21 denies that the colony of Georgia went into open, notorious and adverse possession of any territory or appurtenances other than that herein delimited or that South Carolina had any notice of any such adverse claim, but on the contrary asserted her own claim of possession to the middle thread of said stream known as the Savannah, as the common boundary. Defendant further denies that plaintiff has ever or does now exercise jurisdiction beyond the middle thread of the stream of the boundary rivers Savannah, Toogaloo and the Chatooga, as hereinafter alleged.

9. Defendant denies so much of paragraph nine as alleges that Georgia as a State after the Revolution continued to hold peaceably, notoriously and adversely to the northern or eastern bank of the Savannah.

Defendant respectfully submits in answer to allegations contained in paragraph ten of the complaint that it is the southern branch and not the northern branch as herein alleged, of the Savannah, that is known as the Tugaloo.

11. Defendant denies specifically the allegations contained in paragraph eleven of the complaint.

12. Defendant denies specifically the allegations contained in paragraph twelve of the complaint.

13. Defendant denies so much of paragraph thirteen of the complaint as is not hereinafter modified or specifically admitted and alleges that there has been no question as to the boundary line between the State of Georgia and the State of South Carolina since the
22 adjustment of the controversy hitherto existing, in the Beaufort convention.

14. Defendant, answering allegations contained in paragraphs fourteen, fifteen and sixteen of the complaint, respectfully submits that there is no longer need for controversy as to the boundary line between the State of Georgia and the State of South Carolina inasmuch as this matter was finally settled by the Beaufort convention.

15. Respondent further answering and by way of recapitulation submits that Charles the Second, King of Great Britain, by his letters-patent, granted unto certain Lords-Proprietors therein named, their heirs and assigns, on the 30th day of June, of the seventeenth year of his reign, and in A. D. 1663, all that province, territory or tract of ground situate in North America extending north and eastward as far as the north end of the Carahtuke River or Gullet upon a straight westerly line to Wyonoahe Creek, which lies within or about the degrees of 36 and 30 minutes northern latitude and west in a direct line as far as the South Seas and south and westward as far as 29 degrees north latitude, inclusive, and west in a direct line as far as the South Seas, which territory was called Carolina, together with all ports, harbors, bays, rivers, soil, land, fields, woods, lakes and other rights and privileges therein named; that thereafter said Lords-Proprietors, grantees aforesaid, by virtue of said grant, entered upon and took possession of said territory and established within the same many settlements and erected therein posts of defense.

16. That seven of the said Proprietors of Carolina sold and
23 surrendered to George the Second, then King of Great Britain, all their title and interest in the said province and the share of the remaining proprietor was allotted to him in that portion, which, subsequent to the division of Carolina into two provinces, was called North Carolina; the remaining portion called South Carolina, being the exclusive property of the crown.

17. That afterwards, on the 9th day of June, 1732, King George the Second, by his letters-patent or royal charter under the Great Seal of Great Britain incorporated certain petitioners by the name of the trustees, for the establishing of the Colony of Georgia in America with perpetual succession and did by the said letters-patent give and grant in free and common soccage all those lands, countries and territories situate, lying and being in that part of South Carolina in America which lay from the most northern stream of a river commonly called the Savannah, thence along the seacoast to the southward unto the most southern branch of a certain other great river called the Alatomaha, and westward from the heads of the said rivers respectively, in direct lines to the South Seas.

18. That thereafter, to wit, on the sixth day of August, 1754, his Majesty, George the Second, constituted and appointed John Reynolds, Esquire, to be Captain General and Commander-in-Chief in and over said Colony of Georgia in America, with the following boundaries: Lying from the most northernly stream of a river commonly called Savannah, all along the seacoast to the south-
24 ward end of the most southern stream of a certain other great

river called the Alatomaha and westward from the heads of the said rivers in straight lines to the South Seas.

19. That afterwards, to wit, from the year 1775 to the year 1783 open war existed between the Colonies of South Carolina and Georgia and other Colonies constituting the United States on the one part and his Majesty, George the Third, King of Great Britain, on the other part, and on the third day of September, in the year of our Lord 1783, a definite Treaty of Peace was signed and concluded at Paris by and between certain authorized commissioners on the part of the said belligerent powers, which was afterwards duly ratified and confirmed by the said two respective powers and by the first article of said treaty his Britan-ic Majesty acknowledged the sovereignty and independence of the American Colonies aforesaid.

20. That in the year 1782, as the result of the assertion of certain claims by the State of Georgia, a dispute arose between said State and the State of South Carolina concerning the boundary line between said two States, and the State of South Carolina in consequence thereof petitioned the Congress of the United States for a hearing and determination of the differences and disputes subsisting between said State and the State of Georgia, agreeably to the Ninth Article of the Articles of Confederation and that said Congress thereupon on the same day did resolve that the lawful agents of said respective

States should convene and arrive at an amicable adjustment
25 of these differences as to the boundary.

21. That of this resolve, due notice was served upon the State of Georgia by serving its Legislature with an attested copy of said petition of the State of South Carolina and said resolve of Congress.

22. That on the first day of September, 1786, said authorized agents from the State of South Carolina and the State of Georgia respectively, in pursuance of the order of Congress, appeared before its session and produced their credentials, which were read and then recorded, together with the Acts of their respective Legislatures, and these Acts and credentials authorized said agents to settle and compromise all the differences and disputes aforesaid as well as to appear and represent the said States respectively before any tribunal that might be created by Congress for that purpose agreeably to the said Ninth Article of the Confederation. And in conformity to the powers aforesaid, said Commissioners of the said respective States of South Carolina and Georgia afterwards on the 28th day of April, in the year of our Lord 1787, met at Beaufort, in the State of South Carolina, and then and there entered into, signed and concluded a Convention between the said respective States, by the first article of which Convention it was agreed that the most northern branch or stream of the River Savannah from the sea or mouth of such stream to the fork or confluence of the rivers then called Tugaloo and Keowee; and thence the most northern branch or stream of the River

Tugaloo to its intersection with the northern boundary line of
26 South Carolina if said branch or stream of the River Tugaloo extended so far north, reserving all the islands in said Rivers

Savannah and Tugaloo to the State of Georgia, etc. And by the third article of the Convention aforesaid it was agreed by the State of Georgia that thereafter no claim would be asserted by said State to any lands northward or northeastward of the boundary above established, but relinquished and ceded to the State of South Carolina all the right, title and claim which the said State of Georgia had in or to the said lands. That the said State of Georgia did also declare that it would at all times thereafter ratify and confirm all and whatsoever the said Commissioners or a majority of them representing the said State at the Convention aforesaid did or should do in adjudging the premises and that the said action would be forever binding on said State.

23. That thereafter, to wit, on the 28th day of April, 1788, in the Senate-House of the General Assembly of the State of South Carolina, an Ordinance was passed ratifying and confirming the Convention between the States of South Carolina and Georgia concluded at Beaufort on the 26th day of April, 1787, establishing the boundary between the two States of Georgia and South Carolina as aforesaid. That on February 1, 1788, the General Assembly of the State of Georgia ratified the Treaty of Beaufort aforesaid fixing the boundary between the two States of Georgia and South Carolina.

24. That subsequent to the conventional agreement, to wit, on the ninth day of August, in the year of our Lord one thousand
27 seven hundred and eighty-seven, the delegates of the said State of South Carolina in Congress moved that the acts of said Convention be ratified and confirmed and that the lines and limits therein adopted be thereafter taken and received as the boundary between the said States of South Carolina and Georgia, which motion was by the unanimous vote of Congress committed and the same Convention was thereupon entered of record upon the Journals of Congress.

25. That the boundary line between the State of Georgia and the State of South Carolina has accordingly been from said date of the ratification of the Beaufort Convention recognized and acquiesced in by the State of South Carolina and the State of Georgia as follows: From the most northern stream or branch of the river known as the Savannah at its entrance into the ocean to the confluence of the Tugaloo and Seneca (formerly Keowee), reserving all the islands in the said Rivers Tugaloo and Savannah River to Georgia, and from the confluence of the said Tugaloo and Seneca River up the most northern branch or stream of the said Tugaloo River, namely, the Chatooga River, to the North Carolina line on the 35th degree of north latitude, the line being low watermark at the southern shore of the most northern stream of said rivers where the middle of the river is broken by islands and the middle thread of the stream where the rivers flow in one stream or volume.

26. That since the date of the Beaufort Treaty and its ratification, the States of South Carolina and Georgia respectively have recognized

28 the dividing or boundary line as being that set out in the foregoing paragraph as conforming as nearly as possible to the line agreed on in the Beaufort Convention. This was the language of Section 18 of the Code of 1861, of the State of Georgia, the complainant herein, and has been the language reiterated and repeated in every subsequent code of laws of said State of Georgia up to and inclusive of the Code of 1911 (See Section 17), as well as the language of the successive codes of the State of South Carolina, the defendant, for a like period. That for just so long, the State of Georgia, the complainant herein, has acquiesced in and recognized this as the true and accepted boundary in all questions of jurisdiction and the Courts of said State have so held and taken cognizance; that complainant has for just so long yielded without protest to the State of South Carolina, the respondent or defendant herein, the right of assessing and collecting taxes upon this basis of apportionment, on hydroelectric power sites, industries and bridges spanning said rivers forming the boundary line.

That the terms of the Beaufort Treaty have been so interpreted by the Courts of the United States in numerous cases and such interpretation or construction is *res judicata*. And that to disturb such construction would be in violation of the covenants of treaty and would deprive the State of South Carolina, the defendant herein, of her just, legal and vested rights and title asserted and possessed, openly, notoriously and peaceably thereunder since the date of said treaty and its ratification.

29 Having thus made full answer to all the matters and things contained in the Bill, this defendant prays to be dismissed hence with his costs in this behalf incurred.

SAM'L M. WOLFE,
*Attorney General, for the State of
South Carolina, Defendant.*

STATE OF SOUTH CAROLINA,
County of Richland:

Personally comes before me, the undersigned duly appointed and commissioned Notary Public for and in the State of South Carolina, authorized to administer oaths, Robert A. Cooper, who, on oath, says that he is the Governor of the State of South Carolina, the defendant herein, that he has read the foregoing answer to the Bill of Complaint by way of defense and that the matters alleged in said answer by way of defense are true.

R. A. COOPER,
Governor of the State of South Carolina.

Sworn to and subscribed before me this 11th day of Sept., 1919.

M. J. MILLER,
Notary Public for S. C.

Stipulations.

In the Supreme Court of the United States, October Term, 1919.

In Chancery.

No. 22, Original.

30

THE STATE OF GEORGIA, Complainant,

VS.

THE STATE OF SOUTH CAROLINA, Respondent.

Stipulation.

We, the undersigned, for and in behalf of the State of Georgia and the State of South Carolina, respectively, parties litigant, agree and bind the said respective States herein, for the purposes of this cause, to the following stipulation of facts:

That the State of Georgia has properly obtained from the Supreme Court of the United States the authority to file this complaint against the State of South Carolina.

31 That the filing of this complaint has been authorized by the Legislature of the State of Georgia in resolution of August 21st, 1917, which resolution is contained in paragraph second of the complaint as filed in this Court.

That Charles the Second, King of Great Britain, by charter dated March 24th, 1663, in the fifteenth year of his reign, granted to eight persons as therein named, as Lords-Proprietors thereof, all the lands lying and being within his dominions of America between thirty-one and thirty-six degrees of North latitude, in a direct West line to the South seas, styling the lands so described "the province of Carolina;" that on the thirtieth day of June, 1665, in the seventeenth year of his reign, the said King granted to the said Lords-Proprietors, their heirs and assigns, a second charter, enlarging the bounds of Carolina, viz., from twenty-nine degrees of North latitude to thirty-six degrees, thirty minutes, and conveying all that territory, or tract of ground situate in North America extending north and eastward as far as the north end of Charabtuke River or gullet, upon a straight westerly line to Wyonoahe Creek, which lies within or about the degrees of thirty-six and thirty minutes North latitude and Westerly in a direct line as far as the South Seas; and South and Westward as far as the twenty-ninth degree of North latitude, inclusive; thence west, in a direct line to the South Seas, which territory was entered upon and taken possession of by the said Lords-Proprietors and called Carolina. That said grant carried with it

32 all intervening territory whatsoever together with all ports, harbors, bays, rivers, soil, fields, woods, lakes, rights and privileges therein named. That thereafter a portion of the aforesaid territory beyond the thirty-fifth degree of North latitude

was allotted to one of the eight Lords-Proprietors, and that portion remaining south and westerly as aforesaid, of said parallel of North latitude was retained by the seven remaining Lords-Proprietors absolutely.

On the 26th day of July, in the third year of the reign of George the Second, King of Great Britain, and in the year of our Lord, 1729, the heirs and legal representatives of all the said remaining seven grantees in conformity with an Act of Parliament entitled An Act for establishing an agreement with seven of the Lords-Proprietors of Carolina for the surrender of their title and interest in that province, to his Majesty, for and in consideration of the sum of twenty-two thousand, five hundred pounds, paid to said heirs by the agent of said king, sold and surrendered to his Majesty all their right of soil and privilege incident thereto, and made deed of indenture thereto which was duly enrolled in the Chancery of Great Britain and there remains in the Chapel of the Rolls. That thereafter his said Majesty, George the Second, formally directed that those portions of the province which had long been known as North Carolina and South Carolina respectively, be separated and have separate governments, and appointed Robert Johnson, Esqr., to be Governor of the province of South Carolina, by commission under the Great Seal of the kingdom of Great Britain, authorizing the said Governor Johnson to grant lands within the said province. That pursuant thereto,

the said Governor Johnson asserted his jurisdiction over such
 33 area of territory as was included in the grant by King Charles the Second, to the aforesaid Lords-Proprietors.

The Proprietors named having re-deeded the territories above described to the crown of Great Britain, the above province of South Carolina was thereupon established under what was known as a royal grant as distinguished from a proprietary grant. Under this grant the right of the soil and the jurisdiction over the territory remained in the crown, and the boundaries were subject to alteration at the pleasure of the Crown. South Carolina then under the charter and in the manner described held and enjoyed considerable territories in America at the beginning of the year 1732.

That afterwards, the Right Honorable Viscount Percival, The Honorable Edward Digby, the Honorable George Carpenter, James Oglethorpe, Esqr., with others, petitioned the lords of the committee of his Majesty's privy council for a grant of lands in South Carolina, for the charitable purpose of transporting necessitous persons and families from London to that province, there by their industry, to procure a livelihood, and for this purpose to be incorporated. That the lords of the said privy council referred the said petition to the board of trade, so called, of Great Britain, who on the 17th day of December, A. D. 1730, made report thereon and recommended that his Majesty would be pleased to incorporate the said petitioners as a charitable society and further recommended that his Majesty be pleased to grant said petitioners and their successors forever, "all that tract of land in his province of South Carolina lying between
 34 the Rivers Savannah and Alatamaha, to be bounded by the most navigable and largest branches of the Savannah, and the most southerly branch of the Alatamaha", and that they

should be separated from the colony of South Carolina and be made independent thereof, save only in command of their militia.

That afterwards, on the 9th day of June, 1732, King George the Second, by his letters-patent or royal charter under the Great Seal of Great Britain, incorporated certain petitioners by the name of the trustees for the establishing of the Colony of Georgia, in America, with perpetual success'on, and did by the said letters-patent give and grant in free and common soccage "all those lands countries and territories situate lying and being in that part of South Carolina in America which lie from the most northern Stream of a River there commonly called the Savannah all along the sea coast to the Southward unto the most Southern stream of a certain other great water or River called the Alatomaha and Westward from the heads of the said Rivers respectively in direct lines to the South Seas and all that space circuit and precinct of land lying within the said boundaries with the Islands in the Sea lying opposite to the Eastern Coast of the said lands within twenty leagues of the same which are not already inhabited or settled by any authority derived from the Crown of Great Britain together with all the soils grounds havens ports gulfs and bays mines as well Royal mines of gold and silver as other minerals precious stones quarries woods rivers waters fishings as well Royal Fishings of whale and sturgeon as other fishings pearls commodities jurisdiccons royalties franchises privileges and pre-
35 heminences within the said territories and the precincts thereof and thereunto in any sort belonging or appertaining".

That the Trustees of the colony of Georgia and the colony went into possession of these lands, etc., and they and their successors have held them ever since.

That thereafter, to wit, on the sixth day of August, 1754, his Majesty, George the Second, constituted and appointed John Reynolds, Esquire, to be Captain General and Commander-in-Chief in and over the province of Georgia, in America, with the following boundaries: Lying from the most northernly stream of a river commonly called Savannah, all along the seacoast to the southward end of the most southern stream of a certain other great river called the Alatomaha and westward from the heads of the said rivers in straight lines to the South Seas.

That afterwards, to wit, from the year 1775 to the year 1783 open war existed between the Colonies of South Carolina and Georgia and other Colonies constituting the United States, on the one part, and his Majesty, George the Third, King of Great Britain, on the other part, and on the third day of September, in the year of our Lord, 1783, a definitive Treaty of Peace was signed and concluded at Paris by and between certain authorized commissioners on the part of the said belligerent powers, which was afterwards duly ratified and confirmed by the said two respective powers, and by the first article of said Treaty his Briannic Majesty acknowledged the sovereignty and independence of the American Colonies aforesaid.

36 That in the year 1785, as the result of the assertion of certain claims by the State of Georgia a dispute arose between said State and the State of South Carolina concerning the

boundary line between said two States, and the State of South Carolina in consequence thereof petitioned the Congress of the United States for a hearing and determination of the differences and disputes subsisting between the said State and the State of Georgia, agreeably to the Ninth Article of the Articles of Confederation, and that said Congress thereupon on the same day did resolve that the lawful agents of said respective States should convene and arrive at an amicable adjustment of these differences as to the boundary.

That of this resolve, due notice was served upon the State of Georgia by serving its Legislature with an attested copy of said petition of the State of South Carolina and said resolve of Congress, and

That on the first day of September, 1786, said authorized agents from the State of South Carolina and the State of Georgia respectively, pursuant thereto, appeared before its session and produced their credentials which were read and then recorded, together with the Acts of their respective Legislatures, and these Acts and credentials authorized said agents to settle and compromise all the differences and disputes aforesaid as well as to appear and represent the said States respectively before any tribunal that might be created by Congress for that purpose, agreeable to the said Ninth Article of the Confederation.

In conformity to the powers aforesaid, said Commissioners of the said respective States of South Carolina and Georgia afterwards, on the 28th day of April, in the year of our Lord, 1787, met at Beaufort, in the State of South Carolina, and then and there entered into, signed and concluded a Convention between the said respective States, by the first article of which Convention it was agreed as follows:— "The most northern branch or stream of the River Savannah, from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugaloo and Keowee; and from thence, the most northern branch or stream of the said River Tugaloo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugaloo extends so far north, reserving all the islands in said Rivers Savannah and Tugaloo to Georgia", etc.

And further by the third article of said convention, the State of South Carolina agreed that it would not hereafter claim any lands to the eastward, southward, southeastward, or west of the boundary above established, but relinquished and ceded all such territory to the State of Georgia.

And by the fourth article of the Convention, aforesaid, it was likewise agreed by the State of Georgia that thereafter no claim would be asserted by said State to any lands northward or northeastward of the boundary above established, but relinquished and ceded to the State of South Carolina all the right, title and claim which the said State of Georgia had in or to the said lands. That the said States of Georgia and of South Carolina did also declare that they would at all times thereafter ratify and confirm all and whatsoever the said Commissioners or a majority of them representing the said States at the Convention aforesaid did or should do in

adjudging the premises and that the said action would be forever binding on said States.

38 That thereafter, to wit, on the 29th day of February, 1788, in the Senate-House of the General Assembly of the State of South Carolina, an Ordinance was passed ratifying and confirming the Convention between the State of South Carolina and Georgia concluded at Beaufort on the 28th day of April, 1787, establishing the boundary between the two States of Georgia and South Carolina aforesaid. That on February 1, 1788, the General Assembly of the State of Georgia ratified the Treaty of Beaufort aforesaid fixing the boundary between the two States of Georgia and South Carolina.

That subsequent to the conventional agreement, to wit, on the ninth day of August, in the year of our Lord one thousand seven hundred and eighty seven, the delegates of the said State of South Carolina in Congress moved that the said acts of said Convention be ratified and confirmed and that the lines and limits therein adopted be thereafter taken and received as the boundary between the said State of South Carolina and Georgia, which motion was by the unanimous vote of Congress committed and the said Convention was thereupon entered of record upon the Journals of Congress.

The State of Georgia and the State of South Carolina concede, as part of this stipulation, that both parties are bound by the Treaty of Beaufort, and the lines as fixed therein, in so far as they are defined, are binding; and that the sole question for determination in this suit is a construction of that Treaty in respect to the contentions of the parties litigant herein; and in so far as the petition or bill in this case is in conflict with the above, the above statement prevails.

39 It is further agreed, as a part of the stipulation in this case, that as to all historical data pertinent to the case, the documentary evidence introduced in this case shall control, supplementing and correcting in detail the stipulation of facts where such stipulation may be at variance with such documentary evidence.

In the Supreme Court of the United States in its Original Jurisdiction.

THE STATE OF GEORGIA, Complainant,
against

THE STATE OF SOUTH CAROLINA, Respondent.

Agreement.

40 The Honorable Clifford Walker, Attorney-General for the State of Georgia, the Honorable Thomas F. Green, of Counsel for Complainant, and the Honorable S. M. Wolfe, Attorney-General for the State of South Carolina, Respondent herein, agree that in the hearing of this case, all authoritative maps, profiles, surveys, and properly authenticated records and copies of records, whether photographic, or otherwise; all grants, treaties, or properly authenticated

and certified copies of such grants and treaties; all Statutes of either State herein involved, and all decisions pertaining or appurtenant thereto by the State Courts of Georgia and of South Carolina, respectively, or of the United States Courts; all Resolutions by the legislative bodies of the two respective States pertaining or appurtenant to the matters involved shall, for the purpose of determining the facts be admitted in evidence at the instance of either party, without further or formal proof of their genuineness, and remain available as parts of evidence at all times, pending the determination of this suit.

CLIFFORD WALKER,

*Attorney-General for the
State of Georgia, Complainant.*

THOMAS F. GREEN,

Of Counsel for Complainant.

SAM M. WOLFE,

*Attorney-General for the State of
South Carolina, Respondent.*

Atlanta, Ga., this 29th day of May, 1919.

Documents Offered by Complainant.

Mr Denny: The State of Georgia offers in evidence the Treaty
II of Beaufort, or the Convention of Beaufort, being a Convention between South Carolina and Georgia, concluded at Beaufort in 1787.

(The Treaty or Convention referred to is as follows:)

Convention of Beaufort.

Convention Between South Carolina and Georgia, Concluded at Beaufort, 1787.

To all whom these presents shall come the underwritten, Charles Cotesworth Pinckney, Andrew Pickens, and Pierce Butler, Esqrs., commissioners appointed by the State of South Carolina, of the one part, and the underwritten John Habersham and Lachlan M'Intosh, Esqrs., a majority of the commissioners appointed by the State of Georgia, of the other part, send greeting:

Whereas the state of South Carolina did heretofore present a petition to the United States, in Congress assembled, and did therein set forth, that a dispute and difference had arisen and subsisted between the states of South Carolina and Georgia concerning boundaries; and the states claiming respectively the same territories, and that the case and claim of the state of South Carolina was as follows, that is to say: "Charles the Second, King of Great Britain, by charter dated the twenty-fourth day of March in the fifteenth year of his reign, granted to eight persons as therein named, as lords proprietors thereof, all the lands lying and being within his dominions of America between thirty-one and thirty-six degrees of

north latitude, in a direct west line to the south seas, styling the lands so described 'the province of Carolina;' that on the thirtieth day of June, in the seventeenth year of his reign, the said

42 king granted to the said lords proprietors a second charter, enlarging the bounds of Carolina, viz., from twenty-nine degrees of north latitude to thirty-six degrees thirty minutes, and from those points on the sea-coast west in a direct line to the south seas: that seven of the said proprietors of Carolina sold and surrendered to George the Second, late king of Great Britain, all their title and interest in the said province, and the share of the remaining proprietor was separated from the king's and allotted to him in the north part of North Carolina: that Carolina was afterwards divided into provinces, called North and South Carolina: that by a charter, dated the ninth day of June, one thousand seven hundred and thirty-two, George the Second, King of Great Britain, granted to certain persons therein named, all the lands lying between the rivers Savannah and Altamaha, and between lines to be drawn from the heads of those rivers respectively to the south sea, and styled the said colony 'Georgia': that by treaty of peace concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three, the river Mississippi was declared to be the western boundary of the North American colonies; that the governor of South Carolina, in the year one thousand seven hundred and sixty, conceiving that all the lands southward of the Altamaha still belonged to South Carolina, granted several tracts of the said lands: that the government of Georgia complained to the king of Great Britain, respecting those grants as being for lands within its limits, and thereupon his majesty, by proclamation dated the seventh day of October,

43 one thousand seven hundred and sixty-three, annexed to Georgia all the lands lying between the rivers Altamaha and St. Mary's the validity of the grants passed by the governor of South Carolina as aforesaid, remaining however acknowledged and uncontested, and the grantees of the said land, or their representatives still holding it as their legal estate: that South Carolina claims the lands lying between the North Carolina line, and the line run due west from the mouth of Tugalo river to the Mississippi, because as the said state contends the river Savannah loses that name at the confluence of Tugalo and Keowee rivers, consequently that spot is the head of Savannah river. The state of Georgia, on the other hand, contends that the source of the Keowee river is to be considered as the head of Savannah river: that the state of South Carolina also claims all the lands lying between a line to be drawn from the head of the river St. Mary's, the head of the Altamaha, to the Mississippi and Florida, being, as the said state contends, within the limits of its charter, and not annexed to Georgia by the said proclamation of one thousand seven hundred and sixty-three. The state of Georgia on the other hand contends, that the tract of country last mentioned is a part of that state." The state of South Carolina, did, therefore, by their said petition, pray for a hearing and determination of the difference and dispute subsisting as aforesaid, between the said state and Georgia, agreeable to the articles of confederation

and perpetual union between the United States of America. And whereas, the state of Georgia was duly notified of the said petition,

and did by their lawful agents appear in order to establish
 44 their right to the premises, in manner directed by the said articles of confederation, and proceedings were thereon had in Congress in order to the appointment of judges to constitute a court for hearing and determining the said matter in question: and whereas it appeared to be the sincere wish and desire of the said states of South Carolina and Georgia, that all and singular the differences and claims subsisting between the said states, relative to boundary, should be amicably adjusted and compromised: and whereas the legislature of the state of South Carolina did elect the above named Charles Cotesworth Pinckney, Andrew Pickens, and Pierce Butler, Esqrs., commissioners, and did invest them, or a majority of them, with full and absolute power and authority in behalf of that state, to settle and compromise all and singular the differences, controversies, disputes and claims, which subsist between the said state and the state of Georgia, relative to boundary, and to establish and permanently fix a boundary between the two states, and the said state of South Carolina did declare, that it would at all times thereafter ratify and confirm all, and whatsoever the said commissioners, or a majority of them should do in and touching the premises, and that the same should be for ever binding on the said state of South Carolina: and whereas the legislature of the state of Georgia, did appoint John Houston, John Habersham, and Lachlan M'Intosh, Esqrs., commissioners, and did invest them with full and absolute power and authority, in behalf of that state, to settle and compromise all and singular the differences, controversies, disputes

and claims which subsist between the said state and the state
 45 of South Carolina, relative to boundary, and to establish and permanently fix a boundary between the two states; and the said state of Georgia did also declare, that it would at all times thereafter ratify and confirm all and whatsoever the said last mentioned commissioners, or a majority of them, should do in and touching the premises, and that the same should be for ever binding on the said state of Georgia: Now, therefore, know ye, that the underwritten commissioners on the part of the states of South Carolina and Georgia respectively, having by mutual consent assembled at the town of Beaufort, in the state of South Carolina, on the twenty-fourth day of this present month of April, in order to the due execution of their respective trusts, and having reciprocally exchanged and considered their full powers, and declared the same legal and for ever binding on both states, and having conferred together on the most effectual means of adjusting the differences subsisting between the two states, and of establishing and permanently fixing a boundary between them, have agreed, and by these presents for and in behalf of their respective states, do mutually agree to the following articles, that is to say:

Art. I. The most northern branch or stream of the river Savannah, from the sea or mouth of such stream to the fork or confluence

of the rivers now called Tugalo and Keowee; and from thence, the most northern branch or stream of the said river Tugalo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugalo extends so far north, reserving
 46 all the islands in the said rivers Savannah and Tugalo to Georgia; but if the head spring or source of any branch or stream of the said river Tugalo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the head spring or source of the said branch or stream of Tugalo river, which extends to the highest northern latitude, shall for ever hereafter form the separation, limits and boundary between the states of South Carolina and Georgia.

Art. II. The navigation of the river Savannah at and from the bar and mouth, along the northeast side of Cockspur island, and up the direct course of the main northern channel along the north side of Hutchinson's island, opposite the town of Savannah, to the upper end of said island, and from thence up the bed or principal stream of the said river to the confluence of the rivers Tugalo and Keowee, and from the confluence up the channel of the most northern stream of Tugalo river to its source, and back again by the same channel to the Atlantic ocean—is hereby declared to be henceforth equally free to the citizens of both states, and exempt from all duties, tolls, hindrance, interruption, and molestation whatsoever, attempted to be enforced by one state on the citizens of another; and all the rest of the river Savannah to the southward of the foregoing description, is acknowledged to be the exclusive right of the state of Georgia.

Art. III. The state of South Carolina shall not hereafter claim any lands to the eastward, southward, southeastward or west of the boundary above established, but hereby relinquishes and cedes to
 47 the state of Georgia all the right, title and claim which the said state of South Carolina hath to the government, sovereignty, and jurisdiction in and over the same, and also the right of pre-emption of the soil from the native Indians, and all other the estate, property, and claim, which the state of South Carolina hath in or to the said land.

Art. IV. The state of Georgia shall not hereafter claim any lands to the northward or northeastward of the boundary above established, but hereby relinquishes and cedes to the state of South Carolina all the right, title, and claim which the said state of Georgia hath to the government, sovereignty, and jurisdiction in and over the same, and also the right of pre-emption of the soil from the native Indians, and all other the estate, property, and claim which the state of Georgia hath in or to the said lands.

Art. V. The lands heretofore granted by either of the said states between the forks of Tugalo and Keowee shall be the private property of the first grantees, and their respective heirs and assigns; and the grantees of any of the said lands under the state of Georgia, shall, within twelve months from the date hereof, cause such grants or au-

thentic copies thereof, ratified under the seal of the state of Georgia, to be deposited in the office of the secretary of the state of South Carolina, to the end that the same may be recorded there; and after the same shall have been so recorded, the grantees shall be entitled to receive again from the said secretary their respective grants, or the copies thereof, whichsoever may have been so deposited, without any charge or fee of office whatsoever, and every grant which shall not, or which the copy certified as above mentioned shall not be so deposited, shall be judged void.

Art. VI. The commissioners on the part of the state of South Carolina do not, by any of the above articles, mean to cede, relinquish, or weaken the right, title, and claim of any of the individual citizens of the state of South Carolina to any lands situated in Georgia, particularly to the lands situated to the south or southwest of the river Altamaha, and granted during the administration of Governor Boone in the year one thousand seven hundred and sixty-three; and they do hereby declare, that the right and title of the said citizens to the same, is, and ought to remain, as full, strong, and effectual as if this convention had not been made. The commissioners on the part of the state of Georgia do decline entering into any negotiation relative to the lands mentioned in this article, as they conceive they are not authorized so to do by the powers delegated to them.

In testimony, whereof, the said Charles Cotesworth Pinckney, Andrew Pickens, and Pierce Butler, for, and in behalf of the state of South Carolina, and the said John Habersham and Lachlan M'Intosh, for, and in behalf of the state of Georgia, have to these presents and a duplicate thereof, both indented, interchangeably set their hands and affix their seals.

Done at Beaufort, in the state of South Carolina, the twenty-eighth day of April, in the year of our Lord one thousand seven hundred and eighty-seven, and in the eleventh year of the Independence of the United States of America.

CHARLES COTESWORTH PINCKNEY.	[L. S.]
ANDREW PICKENS.	[L. S.]
PIERCE BUTLER.	[L. S.]
JOHN HABERSHAM.	[L. S.]
LACHLAN M'INTOSH.	[L. S.]

Mr. Denny: The State of Georgia also offers in evidence copy of resolutions of the General Assembly of South Carolina, December 15, 1852.

(The resolutions referred to are as follows:)

Resolutions of the General Assembly of South Carolina.

In the Senate, December 15, 1852.

The Committee on Federal Relations, to whom was referred Message No. 3 of His Excellency the Governor, with the letter of Governor Cobb of Georgia, in reference to the boundary line between this

State and Georgia, Report: That they have considered the same, and recommend to the Senate the adoption of the accompanying resolutions:

50 Resolved, That the boundary between South Carolina and Georgia, as defined in the Convention, concluded at Beaufort by the duly authorized Commissioners of the two States, on the twenty-eighth day of April, 1787, and subsequently ratified by the respective Legislatures of these States, is the existing boundary between said States.

Resolved, That the terms of the first article of the said Convention, construed by the undisputed principles of international and common law, fix, as the limit of the respective jurisdictions of the two States, the thread or middle of the stream designated as their boundary; that is to say, the thread or middle of the most northern branch or stream of the Rivers Savannah and Tugaloo, where these Rivers have more than one branch or stream, and the thread or middle of these Rivers where there is but one branch or stream.

Resolved, That such has been the uniform construction given to the said Convention by the Courts of South Carolina, and acted upon by her General Assembly; and that so far as is known to this Legislature, no department of the government of this State has ever at any time acquiesced in any construction of the said Convention, abridging her territorial limits as now defined.

Resolved, That the Governor be requested, in conjunction with the Attorney General, to take such measures as he may deem necessary and proper to establish and maintain the rightful authority and jurisdiction of the State of South Carolina over the territory lying on the side of the boundary line as above defined,

Resolved, That the Senate do agree to the Report.

51 Ordered, That it be sent to the House of Representatives for concurrence.

By order.

W. E. MARTIN,

C. S.

In the House of Representatives, Dec. 16, 1852.

Resolved, That the House do concur in the Report.

Ordered, That it be returned to the Senate.

By order.

H. J. DEAN,

C. H. R.

The Two First Articles of the Convention at Beaufort in 1787.

Article the First.

"The most Northern branch or stream of the River Savannah, from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugaloo and Keowee, and from thence to the most northern branch or stream of the said river Tugaloo till it intersects the

Northern boundary line of South Carolina, if the said branch or stream of Tugaloo extends so far North, reserving all the islands in the said rivers Savannah and Tugaloo to Georgia; but if the head spring or source of any branch or stream of said river Tugaloo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the head spring or source of the said branch or stream of Tugaloo River, which extends to the highest Northern Latitude, shall forever hereafter form the separation. limit and the boundary between the States of South Carolina and Georgia.

Article the Second.

“The navigation of the river Savannah, at and from the bar and mouth, along the north-east side of Cockspar Island and up the direct course of the main northern channel, along the northern side
52 of Hutchinson’s Island, opposite the town of Savannah to the upper end of the said Island, and from thence up the bed or principal stream of the river to the confluence of the rivers Tugaloo and Keowee, and from the confluence up the channel of the most northern stream of Tugaloo river to its source, and back again by the same channel to the Atlantic ocean, is hereby declared equally free to the citizens of both States, and exempt from all duties, tolls, hindrance, interruption or molestation whatsoever, attempted to be enforced by one State on the citizens of the other, and all the rest of the river Savannah to the southward of the foregoing description is acknowledged to be the exclusive right of the State of Georgia.”

Mr. Denny: The State of Georgia offers in evidence a copy of the grant of King George II, of June 9, 1732.

(The grant referred to is as follows:)

Public Record Office Copy.

(Pursuant to Statute 1 & 2 Viet., c. 94.)

Patent-roll (Chancery).

5 George the Second, Part 3, No. 8.

D. Con., Georgia, Incorporacon, 8.

George the Second by the Grace of God to all to whom these presents shall come, Greeting:

Whereas wee are credibly informed that many of our poor subjects are through misfortunes and want of employment reduced to great necessities insomuch as by their labour they are not able to provide a maintenance for themselves and families and if they had means to defray the charge of passage and other expences incident to

- new settlements they would be glad to be settled in any of our
 53 Provinces in America where by cultivating the lands at present
 wast and desolate they might not only gain a comfortable
 subsistence for themselves and families but also strengthen Our
 Colonies and encrease the trade navigacon and wealth of thes Our
 Realms And whereas Our Provinces in North America have been
 frequently ravaged by Indian enemies more especially that of South
 Carolina which in the late war by the neighbouring savages was laid
 wast with fire and sword and great numbers of the English Inhabit-
 ants miserably massacred And our loving subjects who now inhabit
 there by reason of the smallness of their numbers will in case of any
 new war be exposed to the like calamities in as much as their whole
 southern frontier continueth unsettled and lieth open to the said
 savages And whereas wee think it highly becoming Our Crown and
 Royal Dignity to protect all our loveing subjects be they never so
 distant from us to extend our fatherly compassion even to the mean-
 est and most unfortunate of our people and to relieve the wants of
 our above menconed poor subjects and that it will be highly con-
 conducive for the accomplishing those ends that a Regular Colony of
 the said poor people be settled and established in the Southern
 Frontiers of Carolina And whereas wee have been well assured that
 if wee would be graciously pleased to erect and settle a corporacon
 for the receiving managing and disposing of the contribucons of our
 loveing subjects divers persons would be induced to contribute to the
 uses and purposes aforesaid Know yee therefore that wee have for
 the consideracons aforesaid and for the better and more orderly
 carrying on the said good purposes of Our especial grace certain
 knowledge and meer motion willed ordained constituted and
 54 appointed and by these presents for us our heires and suc-
 cessors do will ordain constitute declare and grant that our
 right trusty and welbeloved John Lord Viscount Percival of Our
 Kingdom of Ireland Our trusty and welbeloved Edward Digby
 George Carpenter James Oglethorpe George Heatcote Thomas
 Tower Robert More Robert Hucks Rogers Holland William Sloper
 Francis Kyles John Laroche James Vernon William Belitha Es-
 quires Stephen Hales Master of Arts John Burton Batchelor in
 Divinity Richard Bundy Master of Arts Arthur Bedford Master of
 Arts Samuel Smith Master of Arts Adam Anderson and Thomas
 Coram Gentlemen and such other persons as shall be elected in the
 manner hereinafter mentioned and their successors to be elected in
 manner as hereinafter is directed be and shall be one body politick
 and corporate in deed and in name by the name of The Trustees for
 establishing the Colony of Georgia in America and them and their
 successors by the same name Wee do by these presents for us our
 heires and successors really and fully make ordain constitute and
 declare to be one body politick and corporate in deed and in name for
 ever And that by the same name they and their successors shall and
 may have perpetual succession And that they and their successors by
 that name shall and may forever hereafter be persons able and
 capable in the law to purchase have take receive and enjoy to them
 and their successors any mannors messuages lands tenements rents

adwosons liberties priviledges jurisdictions franchises and other hereditaments whatsoever lying and being in any part of Great Britain of whatsoever nature kind and quality they be in fee and in perpetuity not exceeding the yearly value of One thousand
55 pounds beyond reprises also estates for lives and for years and all other manner of goods chattells and things whatsoever of what name nature quality or value soever they be for the better settling supporting and maintaining the said Colony and other uses aforesaid and to give grant lett and demise the said mannors messuages lands tenements hereditaments goods chattells and things whatsoever aforesaid by lease or leases for term of years in possession at the time of granting thereof and not in reversion not exceeding the term of one and thirty years from the time of granting thereof on which in case no fine be taken shall be reserved the full value and in case a fine be taken shall be reserved at least a moyety of the full value that the same shall reasonably and bona fide be worth at the time of such demise. And that they and their successors by the name aforesaid shall and may for ever hereafter be persons able and capable in the law to purchase have take receive and enjoy to them and their successors any lands territories possessions tenements jurisdictions franchises and other hereditaments whatsoever lying and being in America of what quantity, quality or value soever they be for the better settling supporting and maintaining the said Colony And that by the name aforesaid they shall and may be able to sue and be sued plead and be impleaded answer and be answered unto defend and be defended in all Courts and places whatsoever and before whatsoever Judges Justices or other Officers of Us Our heirs and successors in all and singular actions
56 of this Our Realm of Great Britain And that they and their successors for ever hereafter shall and may have a Comon Seal to serve for the causes and business of them and their successors And that it shall and may be lawful for them and their successors to change break alter and make new the said Seal from time to time and at their pleasure as they shall think best And wee do further grant for us our heirs and successors that the said Corporacon and the Comon Council of the said Corporacon hereinafter by us appointed may from time to time and at all times meet about their affairs when and where they please and transact and carry on the business of the said Corporacon And for the better execucion of the purposes aforesaid Wee do by these presents for us our heirs and successors give and grant to the said Corporacon and their successors that they and their successors for ever may upon the third Thursday in the month of March yearly meet at some convenient place to be appointed by the said Corporacon or the major part of them who shall be present at any meeting of the said Corporacon to be had for the appointing of the said place and that they or two thirds of such of them that shall be present shall at such yearly meeting and at no other meeting of the said Corporation between the hours of Ten in

the morning and four in the afternoon of the same day chuse and elect such person or persons to be members of the said Corporation as they shall think beneficial to the good designs of the said Corporation And Our further will and pleasure is that if it shall happen that any of the persons hereinafter by us appointed as the Common Council of the said Corporation or any other persons to be elected

57 and admitted members of the said Common Council in the manner hereinafter directed shall die or shall by writing under his and their hands respectively resign his or their Office or Offices of Comon Council man or Comon Council men the said Corporation or the major part of such of them as shall be present shall and may at such meeting on the said last Thursday in March yearly in manner as aforesaid next after such death or resignation and at no other meeting of the said Corporation elect and chuse one or more person or persons being members of the said Corporation into the room or place of such person or persons so dead or so resigning as to them shall seem meet And Our will and pleasure is that all and every the person or persons which shall from time to time hereafter be elected Comon Council men of the said Corporation as aforesaid do and shall before he or they act as Comon Council men of the said Corporation take an oath for the faithful and due execution of their office which oath the President of the said Corporation for the time being is hereby authorized and required to administer to such person or persons so elected as aforesaid And Our will and pleasure is that the first President of the said Corporation shall be Our trusty and welbeloved the said John Lord Viscount Percival and that the said President shall within thirty days after the passing of this Charter cause summons to be issued to the several members of the said Corporation herein particularly named to meet at such time and place as he shall appoint to consult about and transact the business of the said Corporation And Our will and pleasure is And Wee do by these presents for us our heirs and successors grant ordain and direct that the Comon Council of the said

58 Corporation shall consist of Fifteen in number And Wee do by these presents nominate constitute and appoint Our Right trusty and welbeloved John Lord Viscount Percival Our trusty and welbeloved Edward Digby George Carpenter James Oglethorpe George Heathcote Thomas Tower Robert More Robert Hucks Rogers Holland William Sloper Francis Eyles John Laroche James Vernon William Belitha Esquires and Stephen Hales Master of Arts to be the Comon Council of the said Corporation to continue in their said offices during their good behaviour And whereas it is our Royal intention that the members of the said Corporation should be increased by election as soon as conveniently may be to a greater number than is hereby nominated Our further will and pleasure is And Wee do hereby for us our heires and successors ordain and direct that from the time of such increase of the members of the said Corporation the number of the said Common Council shall be increased to Twenty four And that at the same Assembly at which such additional members of the said Corporation shall be chosen there shall likewise be elected in the manner hereinbefore directed for the

election of Comon Council men nine persons to be of the said Comon Council and to make up the number thereof Twenty four And our further will and pleasure is that Our trusty and welbeloved the said Edward Digby Esquire shall be the first Chairman of the Comon Council of the said Corporation And that the said Lord Viscount Percival shall be and continue President of the said Corporation And the said Edward Digby shall be and continue Chairman of the Comon Council of the said Corporation respectively until the meeting which shall be had next and immediately after the first meeting of the said Corporation or of the Comon Council of the said Corporation respectively and no longer at which said second meeting

59 and at every other subsequent and future meeting of the said Corporation or of the Comon Council of the said Corporation respectively in order to preserve an indifferent rotation of the several officers or President of the Corporation and of Chairman of the Comon Council of the said Corporation Wee do direct and ordain that all and every the person and persons members of the said Common Council for the being and no others being present at such meetings shall severally and respectively in their turns preside at the meetings which shall from time to time be had and held of the said Corporation or of the Common Council of the said Corporation respectively And in case any doubt or question shall at any time arise touching or concerning the turn or right of any member of the said Comon Council to preside at any meeting of the said Corporacon or of the Comon Council of the said Corporation the same shall be respectively determined by the major part of the said Corporation or of the Comon Council of the said Corporation respectively who shall be present at such meeting provided always that no member of the said Comon Council having served in the Office of President of the said Corporation or of Chairman of the Comon Council of the said Corporation shall be capable of being or of serving as President or Chairman at any meeting of the said Corporation or of the Comon Council of the said Corporation next and immediately ensuing that in which he so served as President of the said Corporation or Chairman of the Comon Council of the said Corporation respectively unless it shall see happen that at any such meeting of the said Corpora-

60 tion there shall not be any other member of the said Comon Council present And Our will and pleasure is that all and every the meetings of the said Corporation or of the Comon Council of the said Corporation the President or Chairman for the time being shall have a voice and shall vote and act as a member of the said Corporation or of the Common Council of the said Corporation at such meeting And in case of an equality of votes the said President or Chairman for the time being shall have a casting vote And Our further will and pleasure is that no President of the said Corporation or Chairman of the Comon Council of the said Corporation or member of the said Comon Council or Corporation by us by these presents appointed or hereafter from time to time to be elected or appointed in manner as aforesaid shall have take or receive directly or indirectly any salary fee perquisite benefit or profit whatsoever for or by reason of his or their serving the said Corpora-

tion or Comon Council of the said Corporation as President Chairman or Comon Council man or as being a member of the said Corporation And Our will and pleasure is that the said herein before appointed President Chairman and Comon Council men before he and they act respectively as such shall severally take an oath for the faithful and due execution of their trust to be administred to the President by the Cheif Baron of Our Court of Exchequer for the time being and by the President of the said Corporation to the rest of the Comon Council who are hereby authorized severally and respectively to administer the same And Our will and pleasure is that all and every person and persons who shall have in his or their own name

or names or in the name or names of any person or persons
 61 in trust for him or them or for his or their benefit any office place or employment of profit under the said Corporacon shall be incapable of being elected a member of the said Corporation And if any member of the said Corporation during such time as he shall continue a member thereof shall in his own name or in the name of any person or persons in trust for him or for his benefit have hold exercise accept possess or enjoy any office place or employment of profit under the said Corporation or under the Comon Council of the said Corporation such member shall from the time of such having holding exercising accepting possessing and enjoying such office place or employment of profit cease to be a member of the said Corporation And Wee do for use our heires and successors grant unto the said Corporation and their successors that they and their successors or the major part of such of them as shall be present at any meeting of the said Corporation convened and assembled for that purpose by proper and convenient notice thereof shall have power from time to time and at all times hereafter to authorize and appoint such persons as they shall think fit to take subscriptions and to gather and collect such moneys as shall be by any person or persons contributed for the purposes aforesaid and shall and may revoke and make void such authorities and appointments as often as they shall see cause so to do And Wee do hereby for us our heires and successors ordain and direct that the said Corporation shall every year lay an account in writing before the Chancellor or Keeper or Commissioners for the custody of the Great Seal of Great Britain of us our heires and successors the Cheif Justice of the Court of Kings

Bench the Master of the Rolls the Cheif Justice of the Court
 62 of Comon Pleas and the Cheif Baron of the Exchequer of us our heires and successors for the time being or any two of them of all moneys or effects by them received or expended for the carrying on the good purposes aforesaid And Wee do hereby for us our heires and successors give and grant unto the said Corporation and their successors full power and authority to constitute ordain and make such and so many By-laws constitutions orders and ordinances as to them or the greater part of them at their General meeting for that purpose shall seem meet necessary and convenient for the well ordering and governing of the said Corporation And the said By-laws constitutions orders and ordinances or any of them to alter and annull as they or the major part of them then present shall

see requisite And in and by such By-laws rules orders and ordinances to sett impose and inflict reasonable pains and penalties upon any offender or offenders who shall transgress break or violate the said By-laws constitutions orders and ordinances so made as aforesaid and to mitigate the same as they or the major part of them then present shall find cause which said pains and penalties shall and may be levyed sued for taken and retained and recovered by the said Corporation and their successors or by their Officers and servants from time to time to be appointed for that purpose by Action of debt or by any other lawful ways and means to the use and behoof of the said Corporation and their successors all and singular which By-laws constitutions orders and ordinances so as aforesaid to be made Wee will shall be duly observed and kept under the pains and penalties therein to be contained so always as the said By laws constitutions

orders and ordinances pains and penalties from time to time
63 to be made and imposed to be reasonable and not contrary or repugnant to the laws or statutes of this Our Realm And that such By-laws constitutions and ordinances pains and penalties from time to time to be made and imposed and any repeal or alteration thereof or of any of them be likewise agreed to be established and confirmed by the General meeting of the said Corporation to be held and kept next after the same shall be respectively made And whereas the said Corporation intend to settle a Colony and to make an habitation and plantation in that part of our Province of South Carolina in America hereinafter described Know Yee therefore that Wee greatly desiring the happy success of the said Corporation for their further encouragement in accomplishing so excellent a work have of Our especial grace certain knowledge and meer mocon given and granted and by these presents for us our heirs and successors do give and grant to the said Corporacon and their successors under the reservations limitations and declarations hereafter expressed seven undivided parts (the whole into eight equal parts to be divided of all those lands countries and territories seituat lying and being in that part of South Carolina in America which lies from the most northern Stream of a River there comonly called the Savannah all along the sea coast to the Southward unto the most Southern stream of a certain other great water or River called the Alatomaha and Westward from the heads of the said Rivers respectively in direct lines to the South Seas and all that space circuit and precinct of land lying within the said boundaries with the Islands in the Sea lying opposite
to the Eastern Coast of the said lands within twenty leagues

64 of the same which are not already inhabited or settled by any authority derived from the Crown of Great Britain together with all the soils grounds havens ports gulfs and bays mines as well Royal mines of gold and silver as other minerals precious stones quarries woods rivers waters fishings as well Royal Fishings of whale and sturgeon as other fishings pearls comodities jurisdiceons royalties franchises priviledges and preheminences within the said territories and the precincts thereof and thereunto in any sort belonging or appertaining and which Wee by Our letters patent may or can grant and in as ample manner and sort as Wee or any Our Royal Pro-

genitors have hitherto granted to any Company Body Politick or Corporate or to any Adventurer or Adventurers Undertaker or Undertakers of any Discoveries Plantation or Traffick of in or unto any foreign parts whatsoever and in as large and ample manner as if the same were herein particularly mentioned and expressed To have hold possess and enjoy the said seven undivided parts (the whole into eight equal parts to be divided as aforesaid) of all and singular the said lands countries and territories with all and singular other the premisses hereinbefore by these presents granted or mentioned or intended to be granted to them the said Corporation and their successors for ever for the better support of the said Colony to be holden of us our heirs and successors as of Our Honour of Hampton Court in Our County of Middlesex in free and comon soccage and not in capite yeilding and paying therefore to us our heirs and successors yearly for ever the sume of Four shillings for every hundred acres of the said lands which the said Corporation shall grant demise

65 plant or settle the said payment not to comence or be made until ten years after such grant demise planting or settling and to be answered and paid to us our heirs and successors in

such manner and in such species of money or notes as shall be current in payment by proclamation from time to time in Our said Province of South Carolina All which lands countries territories and premisses hereby granted or mentioned or intended to be granted Wee do by these presents make erect and create one Independant and separate Province by the name of Georgia by which name Wee will the same henceforth to be called And that all and every person and persons who shall at any time hereafter inhabit or reside within our said Province shall be and are hereby declared to be free and shall not be subject to or be bound to obey any laws orders statutes or constitutions which have been heretofore made ordered or enacted or which hereafter shall be made ordered or enacted by for or as the laws orders statutes or constitutions of Our said Province of South Carolina (save and except only the command in cheif of the Militia of Our said Province of Georgia to our Governor for the time being of South Carolina in the manner hereinafter declared but shall be subject to and bound to obey such laws orders statutes and constitutions as shall from time to time be made ordered and enacted for the better Government of the said Province of Georgia in the manner hereinafter directed And Wee do hereby for us our heirs and successors ordain will and establish that for and during the term of One and twenty years to comence from the date of these our Letters Patent the said Corporacon assembled for that purpose shall and may form and prepare laws statutes and ordinances for and necessary for

66 and concerning the Government of the said Colony and not repugnant to the laws and statutes of England and the same shall and may present under their Comon Seal to us our

heirs and successors in our or their Privy Council for our or their approbation or disallowance And the said laws statutes and ordinances being approved by us our heirs or successors in our or their Privy Council shall from thenceforth be in full force and virtue within our said Province of Georgia And for as much as the good

and prosperous success of the said Colony cannot but chiefly depend next under the blessing of God and the support of our Royal authority upon the provident and good direction of the whole enterprise And that it will be too great a burthen upon all the members of the said Corporation to be convened so often as may be requisite to hold meetings for the settling supporting ordering and maintaining such Colony Therefore Wee do will ordain and establish that the said Comon Council for the time being of the said Corporation being assembled for that purpose or the major part of them shall from time to time and at all times hereafter have full power and authority to dispose of expend and apply all the monies and effects belonging to the said Corporation in such manner and ways and in such expences as they shall think best to conduce to the carrying on and effecting the good purposes herein menconed and intended and also shall have full power in the name and on the account of the said Corporation and with and under their Comon Seale to enter into any covenants and contracts for carrying on and effecting the purposes aforesaid And Our further will and pleasure is that the said Comon Council for the time being or the major part of such of the

67 said Comon Council which shall be present and assembled for that purpose from time to time and at all times hereafter shall and may nominate constitute and appoint a Treasurer or Treasurers Secretary or Secretaries and such other Officers ministers and servants of the said Corporation as to them or the major part of such of them as shall be present shall seem proper or requisite for the good management of their affaires and at their will and pleasure to displace remove and put out such Treasurer or Treasurers Secretary or Secretaries and all such other Officers ministers or servants as often as they shall think fit so to do and others in the room office place or stead of him or them so displeased removed or put out to nominate constitute and appoint and shall and may determine and appoint such reasonable salaries perquisites or other rewards for the labour or service of such Officers servants and persons as to the said Comon Council shall seem meet and all such Officers shall before they act in their respective offices take an oath to be to them administered by the Chairman for the time being of the said Comon

Comon Council of the said Corporation who is hereby authorized to administer the same for the faithful and due execution of their respective offices and places And Our will and pleasure is that all and every person and persons who shall from time to time be chosen or appointed Treasurer or Treasurers Secretary or Secretaries of the said Corporation in manner hereinbefore directed shall during such time as they shall serve in the said offices respectively be incapable of being a member of the said Corporation And Wee do further of

68 Our especial grace certain knowledge and meer motion for us our heirs and successors grant by these presents to the said Corporation and their successors that it shall be lawful for them and their officers or Agents at all times hereafter to transport and convey out of Our Realm of Great Britain or any other Our Dominions into the said Province of Georgia to be there settled all

such and so many of our loveing subjects or any foreigners that are willing to become our subjects and live under our allegiance in the said Colony as shall willingly go to inhabit and reside there with sufficient shipping armour weapons ordnance munition powder shot victuals and such merchandize or wares as are esteemed by the wild people in those parts cloathing implements furniture cattle horses mares and all other things necessary for the said Colony and for their use and defence and trade with the people there and in passing and returning to and from the same Also Wee do for us our heires and successors declare by these presents that all and every the persons which shall happen to be born within the said Province and every of their children and posterity shall have and enjoy all liberties franchises and immunities of free denizens and natural born subjects within any of our Dominions to all intents and purposes as if they had been abiding and born within this Our Kingdom of Great Britain or any other of Our Dominions And for the greater ease and encouragement of our loveing subjects and such others as shall come to inhabit in Our said Colony Wee do by these presents for us Our heirs and successors grant establish and ordain that for ever hereafter there shall be a liberty of conscience allowed in the Worship of God to all persons inhabiting or which shall inhabit or

69 be resident within our said Province And that all such persons except Papists shall have a free exercise of their Religion so they be contented with the quiet and peaceable enjoyment of the same not giving offence or scandal to the Government And Our further will and pleasure is And Wee do hereby for us our heirs and successors declare and grant that it shall and may be lawful for the said Comon Council or the major part of them assembled for that purpose in the name of the Corporation and under their Comon Seal to distribute convey assigne and sett over such particular portions of the lands tenements and hereditaments by these presents granted to the said Corporation unto such of our loveing subjects natural born or denizens or others that shall be willing to become subjects and live under our allegiance in the said Colony upon such terms and for such estates and upon such rents reservations and conditions as the same may lawfully be granted And as to the said Comon Council or the major part of them so present shall seem fit and proper Provided always that no grant shall be made of any part of the said lands unto any person being a member of the said Corporation or to any other person in trust for or for the benefit of any member of the said Corporation And that no person having any estate or interest in law or equity in any part of the said lands shall be capable of being a member of the said Corporation during the continuance of such estate or interest Provided also that a greater quantity of the said land be granted either entirely or in parcels to or to the use of or in trust for any one person than five hundred acres And that all grants made contrary to the true intent and meaning hereof shall be absolutely null and void

70 And Wee do hereby grant and ordain that such person and persons for the time being as shall be thereunto appointed by the said Corporation shall and may at all times and from time to

time hereafter have full power and authority to administer and give the oaths appointed by an Act of Parliament made in the First year of the Reign of our late Royal Father to be taken instead of the Oaths of Allegiance and Supremacy and also the Oath of Abjuration to all and every person and persons which shall at any time be inhabiting or residing within our said Colony And in like cases to administer the solemn affirmation to any of the persons comonly called Quakers in such manner as by the Laws of Our Realm of Great Britain the same may be administred And Wee do of Our further grace certain knowledge and meer motion grant establish and ordain for us our heirs and successors that the said Corporation and their successors shall have full power and authority for and during the term of One and twenty years to comence from the date of these Our letters patents to erect and constitute Judicatures and Courts of Record or other Courts to be held in the name of us our heirs and successors for the hearing and determining of all manner of crimes offences pleas processes plaints actions matters causes and things whatsoever arising or happening within the Province of Georgia or between persons inhabiting or residing there whether the same be criminal or civil And whether the said crimes be capital or not capital and whether the said pleas be real personal or mixed and for awarding and making out executions thereupon to which Courts and Judicatures Wee do hereby for us our heirs and successors give and grant full power

- and authority from time to time to administer Oaths for the
 71. discovery of truth in any matter in controversy or depending before them or the solemn affirmation to any of the persons comonly called Quakers in such manner as by the laws of Our Realme of Great Britain the same may be administred And Our further will and pleasure is that the said Corporation and their successors do from time to time and at all times hereafter register or cause to be registred all such leases grants plantings conveyances settlements and improvements whatsoever as shall at any time hereafter be made by or in the name of the said Corporation of any lands tenements or hereditaments within the said Province and shall yearly send or transmit or cause to be sent and transmitted authentick accounts of such leases grants conveyances settlements and improvements respectively unto the Auditor of the Plantations for the time being or his Deputy and also to Our Surveyor for the time being of Our said Province of South Carolina to whom Wee do hereby grant full power and authority from time to time as often as need shall require to inspect and survey such of the said lands and premisses as shall be demised granted and settled as aforesaid which said survey and inspection Wee do hereby declare to be intended to ascertain the quit rents which shall from time to time become due to us Our heirs and successors according to the reservacon hereinbefore mentioned and for no other purpose whatsoever hereby for us our heirs and successors strictly enjoyning and commanding that neither our or their Surveyor or any person whatsoever under the pretext and colour of making the said survey or inspection shall take
 72. demand or receive any gratuity fee or reward of or from any person or persons inhabiting in the said Colony or from the said Corporation or Comon Council thereof on the pain or

forfeiture of their Office or Offices and incurring our highest displeasure Provided always And our further will and pleasure is that all leases grants and conveyances to be made by or in the name of the said Corporation of any lands within the said Province or a Memorial containing the substance and effect thereof shall be registered with the Auditor of the Plantations of us our heirs and successors within the space of one year to be computed from the date thereof otherwise the same shall be void And Our further will and pleasure is that the rents issues and all other profits which shall at any time hereafter come to the said Corporation issuing or arising out of or from the said Province or out of or from any part of parcel of the same shall from time to time and at all times hereafter be laid out and applied in such expences and in such manner as the said Comon Council of the said Corporation or the major part of such of them as shall be present at any meeting for that purpose assembled shall think will most improve and enlarge the said Colony and best answer the good purposes hereinbefore mentioned and for defraying all other charges about the same And Our will and pleasure is that the said Corporation and their successors shall from time to time give into one of the Principal Secretaries of State and to the Commissioners of Trade and Plantation Accounts of the progress of the said Colony And our will and pleasure is that no act done at any meeting of the said Comon Council of the said Corporation shall be effectual and valid unless Eight members at least of the said Comon

73 Council including the member who shall serve as Chairman at the said meeting be present and the major part of them consenting thereunto And Our will and pleasure is that the Comon Council of the said Corporation for the time being or the major part of them who shall be present being assembled for that purpose shall from time to time for during and until the full end and expiration of Twenty one years to comence from the date of these Our letters patent have full power and authority to nominate make constitute commission ordain and appoint by such name or names stile or stiles as to them shall seem meet and fitting All and singular such Governors Judges Magistrates Ministers and Officers Civil and Military both by sea and land within the said District as shall by them be thought fit and needful to be made or used for the Government of the said Colony (save always and except such Officers only as shall by us our heirs and successors be from time to time constituted and appointed for the managing collecting and receiving such Revenues as shall from time to time arise within the said Province of Georgia and become due to us our heirs and successors) Provided always And it is our will and pleasure that every Governor of the said Province of Georgia to be appointed by the Comon Council of the said Corporation before he shall enter upon or execute the said office of Governor shall be allowed and approved by us our heirs and successors and shall take such oaths and shall qualify himself in such manner in all respects as any Governor or Comander in Cheif of any of our Colonys or Plantations in America are by law required to do and shall give good and sufficient security for observing the

74 several Acts of Parliament relating to trade and navigacon and to observe and obey all instructions that shall be sent to

him by us our heirs or successors or any acting under our or their authority pursuant to the said Acts or any of them And Wee do by these presents for us our heirs and successors will, grant and ordain that the said corporation and their successors shall have full power for and during and until the full end and term of One and twenty years to comence from the date of these our letters patent by any Comander or other Officer or Officers by them for that purpose from time to time appointed to train instruct exercise and govern a Militia for the special defence and safety of our said Colony to assemble in martial array and put in warlike posture the inhabitants of the said Colony and to lead and conduct them and with them to encounter expulse repel resist and pursue by force of arms as well by sea as by land within the limitts of our said Colony and also to kill slay destroy and conquer by all fitting ways enterprizes and means whatsoever all and every such person and persons as shall at any time hereafter in an hostile manner attempt or enterprize the destruction invasion detriment or annoyance of our said Colony and to use and exercise the law martial in time of actual war invasion or rebellion in such cases whereby law the same may be used or exercised and also from time to time to erect forts and fortify any place or places within our said Colony and the same to furnish with all necessary ammunition provision and stores of war for offence and defence and to comit from time to time the custody and government of the same to such person or persons as to them shall seem meet and the said

75 forces and fortifications to demolish at their pleasure and to take and surprize by all ways and means whatsoever all and every such person or persons with their ships arms ammunition and other goods as shall in an hostile manner invade or attempt the invading conquering or annoying of our said Colony And Our will and pleasure is And Wee do hereby for us our heirs and successors declare and grant that the Governor or Comander in Cheif of the Province of South Carolina of us our heirs and successors for the time being shall at all times hereafter have the Cheif Command of the Militia of our said Province hereby erected and established and that such Militia shall observe and obey all orders and directions that shall from time to time be given or sent to them by the said Governor or Comander in Cheif any thing in these presents before contained to the contrary thereof in any wise notwithstanding And of Our especial grace certain knowledge and meer motion Wee have given and granted and by these presents for us our heirs and successors do give and grant unto the said Corporation and their successors full power and authority to import and export their goods at and from any port or ports that shall be appointed by us Our heires or successors within the said Province of Georgia for that purpose without being obliged to touch at any other port in Carolina And Wee do by these presents for us our heires and successors will and declare that from and after the determination of the said Term of One and twenty years such form of Government and method of making laws statutes and ordinances for the better governing and ordering the said Province of Georgia and the inhabitants thereof

76 shall be established and observed within the same as Wee our heires or successors shall hereafter ordain and appoint and shall be agreeable to law And that from and after the determination of the said Term of One and twenty years the Governor of our said Province of Georgia and all Officers Civil and Military within the same shall from time to time be nominated constituted and appointed by us our heires and successors and Lastly Wee do hereby for us our heires and successors grant unto the said Corporation and their successors that these our letters patents or the inrollment or exemplification thereof shall be in and by all things good firm valid sufficient and effectual in the law according to the true intent and meaning thereof and shall be taken construed and adjudged in all our Courts and elsewhere in the most favourable and beneficial sence and for the best advantage of the said Corporation and their successors any omission imperfection defect matter cause or thing whatsoever to the contrary in any wise notwithstanding In witness Witness our self at Westminster the ninth day of June

By Writ of Privy Seal.

Mr. Denny: The State of Georgia offers in evidence a description of the boundary line between Georgia and South Carolina as set out in Volume 1 of the Code of South Carolina for 1912, which is as follows:

Code of Laws of South Carolina, 1912.

Volume 1.

Section 1. Jurisdiction of the State of South Carolina.

* * * * *

77 From the State of Georgia, South Carolina is divided by the Savannah River, from its entrance into the ocean to the confluence of the Tugaloo and Seneca Rivers; thence by the Tugaloo River to the confluence of the Tugaloo and Chatooga Rivers; thence by the Chatooga River to the North Carolina line aforesaid, in the thirty fifth degree of north latitude, the line being low water mark at the southern shore of the most northern stream of said rivers where the middle of the rivers is broken by islands; and middle thread of the stream where the river flows in one stream or volume.

Also See Revised Statutes of 1893, Sec. 1.

77a Mr. Denny: Also, I wish to introduce Watkins Digest of the Laws of Georgia, published in 1800, page 747, number twenty three, being a "Declaration of the Boundary of Georgia" in the following words, to-wit:

"And whereas it may so happen that persons emigrating from elsewhere and disposed to settle in this State, may not be sufficiently acquainted with the limits and boundaries of the same; and surveyors may wilfully or ignorantly commit mistakes in the running of lines,

unless the said limits and boundaries be made known to them: In order therefore to inform and encourage all persons disposed to migrate into this State, to prevent mistakes and remove every pretense for fraud in surveyors and others intrusted with the execution of this law, Be it enacted, ordained and declared by the authority aforesaid, That the limits, boundaries, jurisdiction and authority of the State of Georgia, do and did and of right, ought to extend from the mouth of the River Savannah (along the North side thereof) and up the most northern stream or fork of the said river, to its head or source; from thence in a due west course to the River Mississippi."

Also Section 13 of the Land Act of the Legislature of Georgia, dated February 17th, 1783, and found in Marbury & Crawford's Digest of the Laws of Georgia, page 328, and which is in the following words, to-wit:

"And, Whereas, it may happen that persons emigrating from elsewhere, and disposed to settle in this State, may not be sufficiently acquainted with the limits and boundaries of the same, and surveyors may wilfully or ignorantly commit mistakes in the running the lines, unless the said limits and boundaries be made known to them; In order, therefore, to inform and encourage all persons disposed to migrate into this State, to prevent mistakes, and to remove every pretense for fraud in surveyors and others intrusted with the execution of this law, Be it enacted, ordained and declared by the authority aforesaid, That the limits, boundaries, jurisdiction and authority of the State of Georgia Do and did, and of right ought to extend from the mouth of the Savannah, along the north side thereof, and up the most northern stream or fork of the said River to its head or source; from thence in a due west course to the River Mississippi * * *

Also the Act of the Legislature of Georgia, dated February 15, 1799, and so much of Section 1 thereof as is in the following words, to-wit, said Act of 1799, being found in Marbury & Crawford's Digest of the Laws of Georgia of 1802, page 584:

"Whereas, The twenty third section of the first Article of the Constitution, speaking of the powers of the Legislature, is in the words following, to-wit: They shall have power to alter the boundaries of the present Counties, and to lay off new ones, as well out of counties already laid off, as out of other territory belonging to the State; but the property of the soil, in a free government being one of the essential rights of a free people, it is necessary in order to avoid disputes that the limits of this State should be ascertained with precision and exactness, and this convention composed of the immediate representatives of the people, chosen by them to assert their rights, and to revise the powers given by them to the government from whose will and ruling authority of right flows: Doth assent and declare the boundaries of this State to be as follows. That is to say, the limits, boundaries, jurisdictions, and authority of the State of Georgia, do and did, and of right ought to extend from the sea, or mouth of the

river Savannah, along the northern branch or stream thereof, to the fork or confluence of the river now called Tugalo and Keowee, and from thence along the most northern branch or stream of said river Tugalo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugalo extends so far north, reserving all the islands in the said Rivers Savannah and Tugalo to Georgia, but if the head spring, or source of any branch or stream of the said River Tugalo does not extend to the north boundary of South Carolina, then a west line to the Mississippi * * *."

Documents Offered by Respondent.

Mr. Wolfe: The State of South Carolina offers in evidence a copy of the respondent's motion for Order of Reference.
(The copy of motion for Order of Reference is as follows:)

78 (On the title page appears the following:)

Supreme Court of the United States, October Term, 1919.

No. 22, Original.

THE STATE OF GEORGIA, Complainant.

vs.

THE STATE OF SOUTH CAROLINA.

Motion for Order of Reference.

Samuel M. Wolfe, A. M. Lumpkin, of Counsel for the State of South Carolina, Defendant.

(Following the title page appears the following:)

Supreme Court of the United States, October Term, 1919.

In Equity.

No. 22, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA.

Motion for Order of Reference.

79

Comes now the defendant herein, by counsel, and moves the court for an order referring the above-entitled cause to a special master to be selected by the court to take such testimony as may be necessary in the cause and to receive in evidence such exhibits as may be offered by the parties hereto pertinent to the issues made

by the pleadings herein, and that said special master have power only to report such testimony to the court without conclusions of law or fact.

SAM'L M. WOLFE,
Counsel for Defendant.

In the Supreme Court of the United States, October Term, 1919.

No. 22, Original.

THE STATE OF GEORGIA, Complainant,

vs.

THE STATE OF SOUTH CAROLINA, Respondent.

Motion on Behalf of State of South Carolina for Order of Reference Herein.

To Honorable Hugh M. Dorsey, Governor of the State of Georgia;
Honorable R. A. Denny, Attorney General for the State of Georgia, and Thomas F. Green, Esq., of counsel for complainant herein:

Please take notice that the undersigned, as counsel representing the State of South Carolina in the above-entitled proceeding, will apply to the Supreme Court of the United States in open court on Monday, the 31st day of May, 1920, at the hour of 12 m.,
80 or as soon thereafter as counsel can be heard, for an order referring the above-entitled cause to a special master selected by the court to take such testimony as may be necessary in the cause, and to receive in evidence such exhibits as may be offered by the parties hereto pertinent to the issues made by the pleadings herein, the said special master to have power only to report such testimony to the court without conclusions of law or fact.

This reference being necessary in order that the testimony and documentary evidence affecting the issues herein may be properly correlated by such master and reported to the court for its convenience in hearing the cause at such time as the court may direct.

This Motion will be based upon the pleadings as already filed in this court.

SAM'L M. WOLFE,
*Attorney General for the
State of South Carolina.*
A. M. LUMPKIN,
*Of Counsel for the State of
South Carolina, Respondent.*

Columbia, S. C., May 15, 1920.

Service of the above notice is hereby accepted and acknowledged this 18th day of May, 1920, at Atlanta, in the State of Georgia, and

at Athens, in the said State of Georgia, at the offices of the undersigned counsel for the State of Georgia, respectively, the time intervening said service and the date of the proposed motion being agreed to and any objections as to sufficiency of time being waived.

HUGH M. DORSEY,

Governor of the State of Georgia.

R. A. DENNY,

Attorney General for the State of Georgia.

THOS. F. GREEN,

Of Counsel for the State of Georgia, Complainant.

81 (Endorsed:) Original. In the Supreme Court of the United States, October Term, 1919. No. 22, Original. The State of Georgia, complainant, vs. The State of South Carolina, respondent. Motion on behalf of State of South Carolina for order of reference herein. S. M. Wolfe, attorney general for the State of South Carolina; A. M. Lumpkin, of counsel for the State of South Carolina, respondent. Original.

In the Supreme Court of the United States, October Term, 1919.

No. 22, Original.

THE STATE OF GEORGIA, Complainant,

against

THE STATE OF SOUTH CAROLINA, Respondent.

Consent-order of Reference.

Pursuant to notice herein the parties hereto, by their respective counsel, consent, upon motion of counsel for the respondent, to an order of reference herein, and it is therefore ordered that in view of the nature of this case and the necessity of properly correlating documentary evidence and the taking of testimony that this case be, and it is hereby, referred to ———, in the city of Washington, District of Columbia, as special master to take the testimony pursuant to the notice herein served and filed with the clerk of this court and to report the said testimony at the fall term, 1920, of this court without his conclusions of law and findings of fact.

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CHIEF JUSTICE.

Washington, D. C., this — day of ———, 1920.

We consent to the above order:

R. A. DENNY,

Attorney General for the State of Georgia.

HUGH M. DORSEY,

Governor of the State of Georgia.

THOS. F. GREEN,

Of Counsel for the State of Georgia.

(Endorsed:) In the Supreme Court of the United States, October Term, 1919. No. 22, Original. The State of Georgia, complainant, against The State of South Carolina, respondent. Consent-order of reference.

Mr. Wolfe: The State of South Carolina also introduces in evidence the following:

1. Charter of Charles II to Lords-Proprietors of Carolina, March 24, 1663 (Statutes at Large of South Carolina, I, 22).
2. Charter of Charles II to Lords-Proprietors of Carolina, June 30, 1665 (Statutes at Large of South Carolina, I, 31).
3. Act of Parliament of Great Britain establishing an agreement with the Lords-Proprietors of Carolina for the surrender of their title thereto to the Crown. (Statutes at Large of South Carolina, I, 60.)
4. Order of the Crown fixing the boundaries of the province of Georgia, January 20, 1764 (Laws of the United States, 448-449).
5. Act ratifying Beaufort Treaty by State of South Carolina.
6. Act of General Assembly of Georgia ratifying conventional agreement of April 28, 1787 (Prince's Digest of the Laws of the State of Georgia, 144. Original certified copy in Historical Commission).
7. Additional instructions to Governor Johnson relative to the Charter of Georgia.
8. Map of Beaufort District (South Carolina), Mills' Atlas 1825.

1.

The First Charter Granted by King Charles the Second to the Lords Proprietors of Carolina.

Charles the Second, by the Grace of God King of England, Scotland, France, and Ireland, Defender of the Faith, &c., to all to whom these presents shall come, Greeting:

1st. Whereas our right trusty, and right well beloved Cousins and Counsellors, Edward, Earl of Clarendon, our high Chancellor of England, and George, Duke of Albemarle, Master of our horse and Captain General of all our Forces, our right trusty and well beloved William Lord Craven, John Lord Berkley, our right trusty and well beloved Counsellor, Anthony Lord Ashley, Chancellor of our Exchequer, Sir George Carteret, Knt. and Baronet, Vice Chamberlain of our household, and our trusty and well beloved Sir William Berkley, Knt. and Sir John Colleton, Knight and Baronet, being excited with a laudable and pious zeal for the Propagation of the Christian

84 Faith, and the Enlargement of our Empire and Dominions, have humbly besought leave of us by their industry and charge, to transport and make an ample Colony of our subjects, natives of our Kingdom of England, and elsewhere within our Dominions, unto a certain country hereafter described, in the parts of America not yet cultivated or planted, and only inhabited by some barbarous people, who have no knowledge of Almighty God.

2d. And whereas the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, have humbly besought us to give, grant and confirm unto them and their heirs, the said country, with Priviledges and Jurisdictions requisite for the good government and safety thereof; Know ye, therefore, that we, favouring the pious and noble purpose of the said Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, of our special grace, certain knowledge and meer motion, have Given, Granted and Confirmed, and by this our present Charter, for us, our heirs and successors, do Give, Grant and Confirm unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William Lord Craven, John Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, all that territory or tract of ground, seituat, lying and being within our dominions of America, extending from the North end of the Island called Lucke-Island, which lieth in the Southern Virginia Seas, and within six and thirty degrees of the Northern Latitude, and to the West as far as the South Seas,

85 and so Southerly as far as the river St. Matthias, which bordereth upon the coast of Florida, and within one and thirty degrees of Northern Latitude, and so west in a direct line as far as the South seas aforesaid; together with all and singular Ports, Harbours, Bays, Rivers, Isles, and Islets belonging to the country aforesaid; and also all the Soil, Lands, Fields, Woods, Mountains, Fields, Lakes, Rivers, Bays and Islets, seituat or being within the bounds or limits aforesaid, with the fishing of all sorts of Fish, Whales, Sturgeons, and all other Royal Fishes in the Sea, Bays, Islets and Rivers within the premises, and the Fish therein taken; and moreover all Veins, Mines, Quarries, as well discovered as not discovered, of Gold, Silver, Gems, precious Stones, and all other whatsoever, be it of Stones, Metals or any other thing whatsoever, found or to be found within the countries, isles and limits aforesaid.

3d. And furthermore, the Patronage and Advowsons of all the Churches and Chapels, which as Christian Religion shall increase within the Country, Isles, Islets and Limits aforesaid, shall happen hereafter to be erected, together with license and power to build and found Churches, chappels and Oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated according to the Ecclesiastical laws of our Kingdom

of England, together with all and singular the like, and as ample Rights, Jurisdictions, Priviledges, Prerogatives, Royalties, Liberties, Immunities and Franchises of what kind soever, within the Countries, Isles, Islets, and Limits aforesaid.

86 4th. To have, use, exercise and enjoy, and in as ample manner as any Bishop of Durham in our Kingdom of England, ever heretofore have held, used or enjoyed, or of right ought or could have, use, or enjoy. And them, the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, We do by these Presents, for us, our heirs and successors, make, create and constitute, the true and Absolute Lords Proprietors of the Country aforesaid, and of all other the premises; saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same, and saving also the right, title, and interest of all and every our subjects of the English nation, which are now planted within the limits and bounds aforesaid, (if any be). To have, hold, possess and enjoy the said Country, Isles, Islets, and all and singular other the Premises, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, Sir John Colleton, their heirs and assigns forever, to be holden of us, our heirs and successors, as of our Manner of East Greenwich in our County of Kent, in free and common Soccage, and not in capite, or by Knight service; yielding and paying yearly to us, our heirs and successors, for the same, the yearly rent of twenty marks of lawful money of England, at the feast of All-Saints, yearly forever, the first Payment thereof to begin and to be made on the feast of All-Saints, which shall be in the year of our Lord one thousand, six hundred and sixty-five, and also the fourth part of all gold
87 or silver ore, which, within the limits aforesaid, shall from time to time happen to be found.

5th. And that the country, thus by us granted and described, may be dignified by us with as large Titles and Priviledges as any other part of our Dominions and territories in that region, Know ye, that we of our further grace, certain knowledge, and meer motion, have thought fit to erect the same tract of ground, county, and island, into a Province and out of the fulness of our royal Power and Prerogative, We do, for us our heirs and successors, erect, incorporate and ordain the same into a Province, and call it the Province of Carolina, and so from henceforth will have it called; and forasmuch as we have hereby made and ordained the aforesaid Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, the true Lords and Proprietors of all the Province aforesaid; Know ye, therefore moreover, that we, reposing especial trust and confidence in their Fidelity, Wisdom, Justice and provident Circumspection, for us our

heirs and successors, do grant full and absolute power by virtue of these presents, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, for the good and happy Government of the said Province, to ordain, make, enact, and under their seals to publish any laws whatsoever, either appertaining to the publick state of the said Province, or to the private utility of particular

persons, according to their best discretion, of and with the
 88 advice, assent and approbation of the Freemen of the said Province, or of the greater part of them, or of their Delegates or Deputies, whom for enacting of the said laws, when and as often as need shall require, we will that the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, shall from time to time assemble in such manner and form as to them shall seem best, and the same laws duly to execute upon all people within the said Province and limits thereof, for the time being, or which shall be constituted under the power and government of them or any of them, either sailing towards the said Province of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it shall be needfull, and the quality of the offence requires it, by taking away member and life, either by them, the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, or by them or their Deputies, Lieutenants, Judges, Justices, Magistrates, Officers and Members to be ordained or appointed according to the tenor and true intention of these presents; and likewise to appoint and establish any Judges or Justices, Magistrates or Officers whatsoever, within the said Province, at sea or land, in such manner and form as unto the said Edward Earl of Clarendon, George Duke of Albemarle, William, Lord Craven, John Lord

Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton and their heirs, shall
 89 seem most convenient; also to remit, release, pardon, and abolish, (whether before judgement or after) all crimes and offences whatsoever, against the said laws, and to do all and every other thing and things, which unto the compleat establishment of justice unto courts, sessions, and forms of judicature and manners of proceedings therein do belong, although in these presents express mention be not made thereof; and by Judges and by him or them delegated to award process, hold pleas, and determine in all the said Courts, and places of Judicature, all actions, suits and causes whatsoever, as well Criminal or civil, real, mixt, personal, or of any other kind or nature whatsoever; which laws, so as aforesaid to be published, our pleasure is, and we do require, enjoin and command, shall be absolute, firm and available in law, and that all the liege people of us, our heirs and successors, within the said Province of Carolina,

do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed; provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our Kingdom of England.

6th. And because such assemblies of freeholders cannot be so conveniently called, as there may be occasion to require the same, we do, therefore, by these presents, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by themselves or their magistrates, in that behalf lawfully authorized, full power and authority, from time to time to make and ordain fit and wholesome Orders and Ordinances, within the Province aforesaid, to be kept and observed as well for the keeping of the peace, as for the better government of the people there abiding, and to publish the same to all to whom it may concern; which ordinances, we do by these presents straightly charge and command to be inviolably observed within the said Province, under the penalties therein expressed, so as such Ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our Kingdom of England, and so as the same ordinances do not extend to the binding, charging, or taking away of the right or interest of any person, or persons, in their freehold, goods or chattels whatsoever.

7th. And to the end, the said province may be the more happily increased, by the multitude of people resorting thither, and may likewise be the more strongly defended from the Incursions of Salvages and other Enemies, Pirates and Robbers, therefore we, for us, our heirs and successors, do give and grant by these Presents, Power, License and Liberty unto all the liege people of us, our heirs and successors, in our Kingdom of England or elsewhere, within any other our dominions, islands, colonies or plantations (excepting those who shall be especially forbidden) to transport themselves and families unto the said Province, with convenient shipping and fitting provisions, and there to settle themselves, dwell and inhabit, any law, statute, act, ordinance, or other thing to the contrary, in any wise notwithstanding. And we will also, and of our more special grace, for us, our heirs and successors, do straightly enjoin, ordain, constitute and command, that the said Province of Carolina, shall be of our allegiance, and that all and singular the subjects and liege people of us, our heirs and successors, transported or to be transported into the said Province, and the children of them and of such as shall descend from them, there born or hereafter to be born, be and shall be, denizens and lieges of us, our heirs and successors, of this our Kingdom of England, and be in all things held, treated, and reputed, as the liege faithful people of us, our heirs and successors, born within this our said Kingdom, or any other of our dominions, and may inherit or otherwise purchase and receive, take, hold, buy, and possess any lands, tenements or

hereditaments within the same places, and them may occupy, possess and enjoy, give, sell, aliene and bequeathe; as likewise all libertiee, franchises and privileges of this our Kingdom of England, and of other our dominions aforesaid, and may freely and quietly, have possess and enjoy, as our liege people born within the same, without the least molestation, vexation, trouble or grievance, of us, our heirs and successors, any statute, act, ordinance, or provision to the contrary notwithstanding.

8th. And furthermore, that our subjects of this our said Kingdom of England, and other our Dominions, may be the rather encouraged to undertake this expedition with ready and cheerful minds; know ye, that we of our special grace, certain knowledge, and meer motion, do give and grant by virtue of these presents, as well to the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony,

92 Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, and their heirs, as unto all others as shall from time to time repair unto the said Province, with a purpose to inhabit there, or to trade with the natives of the said Province, full liberty and license to lade and freight in any port whatsoever, of us, our heirs and successors, and into the said Province of Carolina, by them, their servants or assigns, to transport all and singular their goods, wares, and merchandises, as likewise all sorts of grain whatsoever, and any other things whatsoever, necessary for the food and clothing, not prohibited by the laws and statutes of our Kingdoms and Dominions, to be carried out of the same, without any let, or molestation, of us, our heirs and successors, or of any other of our officers, or ministers whatsoever, saving also, to us, our heirs and successors, the customs and other duties and payments, due for the said wares and merchandises, according to the several rates of the places, from whence the same shall be transported. We will also and by these presents, for us, our heirs and successors, do give and grant license by this our charter, unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and to all the inhabitants and dwellers in the Province aforesaid, both present and to come, full power and absolute authority, to import or unlade by themselves or their servants, factors or assigns, all merchandises and goods whatsoever, that shall arise of the fruits and commodities of the said Province, either by land or by sea, into any of the ports of us, our heirs and successors, in our Kingdom of

England, Scotland or Ireland, or otherwise to dispose of the
93 said goods, in the said Ports; and if need be, within one year next after the unlading, to lade the said merchandises and goods again into the same, or other ships, and to export the same into any other countries, either of our Dominions, or foreign, being in amity with us, our heirs and successors, so as they pay such customs, subsidies, and other duties for the same, to us, our heirs and successors, as the rest of our subjects of this our Kingdom, for the

time being, shall be bound to pay, beyond which we will not, that the inhabitants of the said Province of Carolina, shall be any ways charged.

9th. Provided nevertheless, and our will and pleasure is, and we have further for the consideration aforesaid, of our more especial grace, certain knowledge, and meer motion given and granted, and by these presents, for us, our heirs and successors, do give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty and authority, at any time or times, from and after the feast of St. Michael the Arch-Angel, which shall be in the year of our Lord Christ, one thousand, six hundred, sixty and seven, as well to import, and bring into any of our Dominions from the said Province of Carolina, or any part thereof, the several goods and commodities, hereinafter mentioned, that is to say, silks, wines, currants, raisins, capers, wax, almonds, oyl, and olives, without paying or answering

94 to us, our heirs or successors, any custom, import, or other duty, for and in respect thereof for and during the terms and space of seven years, to commence and be accompted, from and after the first importation of four tons of any the said goods, in any one bottom, ship or vessel from the said Province, into any of our Dominions; as also to export and carry out of any of our Dominions into the said Province of Carolina, custom free, all sorts of tools which shall be usefull or necessary for the planters there, in the accommodation and improvement of the premises, anything before, in these presents contained, or any law, act, statute, prohibition, or other matter, or anything heretofore had, made, enacted or provided, or hereafter to be had made, enacted or provided to the contrary, in any wise notwithstanding.

10th. And furthermore, of our more ample and especial grace, certain knowledge, and meer motion, we do for us, our heirs and successors, grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and absolute power and authority, to make, erect and constitute, within the said Province of Carolina, and the Isles and Islets aforesaid, such and so many seaports, harbours, creeks and other places, for discharge and unloading of goods and merchandises, out of ships, boats, and other vessels, and for lading of them, in such and so many places, and with such jurisdiction, privileges and franchises unto the said ports belonging, as to them shall seem most expedient, and that all and singular the ships, boats and other vessels, which shall come for merchandises and trade into the said Province, or shall depart

95 out of the same, shall be laden and unladen at such ports only, as shall be erected and constituted by the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir

George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and not elsewhere, any use, custom or any other thing to the contrary, in any wise notwithstanding.

11th. And we do furthermore will, appoint and ordain, and by these presents for us, our heirs and successors, do grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, that they the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, may from time to time for ever, have and enjoy, the customs and subsidies in the ports, harbors, creeks and other places within the Province aforesaid, payable for goods, merchandise and wares, there laded or to be laded, or unladed, the said customs to be reasonably assessed upon any occasion, by themselves, and by and with the consent of the free people there, or the greater part of them as aforesaid; to whom we give power by these presents, for us, our heirs and successors, upon just cause and in a due proportion, to assess and impose the same.

12th. And further, of our special grace, certain knowledge, and meer motion, we have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and
96 confirm unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and absolute license, power and authority, that the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, Sir John Colleton, their heirs and assigns, from time to time, hereafter forever, at his and their will and pleasure, may assign, alien, grant, demise or enfeof the premises, or any part or parcels thereof, to him or them that shall be willing to purchase the same, and to such person or persons as they shall think fit, to have and to hold, to them the said person or persons, their heirs or assigns, in fee simple or fee taylor, or for term for life, or lives, or years, to be held of them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by such rents, services, and customs, as shall seem met to the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and not immediately of us, our heirs and successors, and to the same person and persons, and to all and every of them, we do give and grant by these presents, for us, our heirs and

successors, license, authority and power, that such person or persons, may have or take the premises, or any parcel thereof,
 97 of the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and the same to hold, to themselves, their heirs or assigns, in what estate of inheritance whatsoever, in fee simple, or fee taylor, or otherwise, as to them and the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, shall deem expedient; the statute made in the Parliament of Edward, son of King Henry, heretofore King of England, our predecessor, commonly called the statute (18 Ed. I West, 3 ch. 1 p. 55) of "*quia emptores terrarum*;" or any other statute, act, ordinance, use, law, custom or any other matter, cause or thing, heretofore published, or provided to the contrary, in any wise notwithstanding.

13th. And because many persons born, or inhabiting in the said Province, for their deserts and services, may expect and be capable of marks of honour and favour, which, in respect of the great distance, cannot be conveniently conferred by us; our will and pleasure therefore is, and we do by these presents, give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full power and authority, to give and confer, unto and upon, such of the inhabitants of the said Province, as they shall think do, or shall merit the same, such marks
 98 of favour and titles of honour as they shall think fit, so as these titles of honour be not the same as are enjoyed by, or conferred upon any the subjects of this our Kingdom of England.

14th. And further, also we do by these presents, for us, our heirs and successors, give and grant license to them, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, full power, liberty and license to erect, raise and build within the said Province and places aforesaid, or any part or parts thereof, such and so many forts, fortresses, castles, cities, burroughs, towns, villages and other fortifications whatsoever, and the same or any of them to fortify and furnish with ordinance, powder, shot, armory, and all other weapons, ammunition, habilements of war, both offensive and defensive, as shall be thought fit and convenient for the safety and welfare of the said Province and places, or any part thereof, and the same, or any of them from time to time, as occasion shall require, to dismantle, disfurnish, demolish and pull down, and also to place, constitute and appoint in and over all or any of the said castles, forts, fortifications, cities, towns and places aforesaid, governors, deputy governors, magistrates, sheriffs and other officers, civil and military,

as to them shall seem meet, and to the said cities, burroughs, towns, villages, or any other place, or places, within the said Province, to grant "letters or charters of incorporation," with all liberties, franchises and priviledges, requisite and usefull, or to or within any corporations, within this our Kingdom of England, granted or
 99 belonging; and in the same cities, burroughs, towns and other places, to constitute, erect and appoint such, and so many markets, marts and fairs, as shall in that behalf be thought fit and necessary; and further also to erect and make in the Province aforesaid, or any part thereof, so many mannors, as to them shall seem meet and convenient, and in every of the said mannors to have and to hold a Court Baron, with all things whatsoever which to a Court Baron do belong, and to have and to hold views of "frank pledge" and "court leet," for the conservation of the peace and better government of those parts, within such limits, jurisdictions and precincts, as by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or their heirs, shall be appointed for that purpose, with all things whatsoever, which to a court leet, or view of frank pledge do belong, the said court to be holden by stewards, to be deputed and authorized by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, or their heirs, or by the Lords of other mannors and leets, for the time being, when the same shall be erected.

15th. And because that in so remote a country, and scituate among so many barbarous nations, and the invasions as well of salvages as of other enemies, pirates and robbers, may probably be feared; therefore we have given, and for us, our heirs and successors, do give
 100 power, by these presents, unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and Assigns, by themselves, or their captains, or other their officers, to levy, muster and train all sorts of men, of what condition or where-soever born in the said Province for the time being, and to make war and pursue the enemies aforesaid, as well by sea as by land, yea, even without the limits of the said Province, and by God's assistance to vanquish and take them, and being taken to put them to death by the law of war, or to save them at their pleasure; and to do all and every other thing, which unto the charge of a captain general of an army belongeth, or hath accustomed to belong, as fully and freely as any captain-general of an army hath or ever had the same.

16th. Also our will and pleasure is, and by this our charter we give unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, full power liberty and authority, in

case of rebellion, tumult or sedition, (if any should happen) which God forbid, either upon the land within the Province aforesaid, or upon the main sea, in making a voyage thither, or returning from thence, by him or themselves, their captains, deputies and officers, to be authorized under his or their seals for that purpose, to whom also, for us, our heirs and successors, we do give and grant by these presents, full power and authority to exercise martial law against

101 mutinous and seditious persons of those parts, such as shall refuse to submit themselves to their government, or shall refuse to serve in the wars, or shall fly to the enemy, or forsake their colours or ensigns, or be loyterers or straglers, or otherwise howsoever offending against law, custom or discipline military, as freely and in as ample manner and form as any captain general of an army, by vertue of his office, might or hath accustomed to use the same.

17th. And our further pleasure is, and by these presents, for us our heirs and successors, we do grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, and to all the tenants and inhabitants of the said Province of Carolina, both Present and to come, and to every of them, that the said Province and the tenants and inhabitants thereof, shall not from henceforth be held or reputed a member or part of any colony whatsoever in America, or elsewhere, now transported or made, or hereafter to be transported or made; nor shall be depending on, or subject to their government in any thing, but be absolutely separated and divided from the same; and our pleasure is, by these presents, that they be separated, and that they be subject immediately to our crown of England, as depending thereof forever; and that the inhabitants of the said Province, nor any of them, shall at any time hereafter, be compelled or compellable, or be any ways subject or liable to appear or answer to any matter, suit, cause, or plaint whatsoever, out of the Province aforesaid, in any other of our islands, colonies, or dominions in America, or elsewhere, other than in our realm of England, and dominion of Wales.

102 18th. And because it may happen that some of the people and inhabitants of the said Province, cannot in their private opinions, conform to the publick exercise of religion, according to the liturgy form and ceremonies of the Church of England, or take and subscribe the oaths and articles, made and established in that behalf, and for that the same, by reason of the remote distances of these places, will, we hope, be no breach of the unity and uniformity established in this nation; our will and pleasure therefore is, and we do by these presents, for us, our heirs and successors, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and

grant unto such person or persons, inhabiting and being within the said Province, or any part thereof, who really in their judgments, and for conscience sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid or any of them, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs or assigns, shall in their discretion think fit and reasonable; and with this express proviso, and limitation also, that such person and persons, to whom such in-

103 dulgences and dispensations shall be granted as aforesaid, do and shall, from time to time declare and continue, all fidelity, loyalty and obedience to us, our heirs and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said Province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalize or reproach the said liturgy, forms, and ceremonies, or any thing relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his or their obedience and conformity, thereunto.

19th. And in case it shall happen, that any doubts or questions should arise, concerning the true sense and understanding of any word, clause, or sentence contained in this our present charter, we will, ordain and command, that at all times, and in all things, such interpretation be made thereof, and allowed in all and every of our courts whatsoever, as lawfully may be adjudged most advantageous and favourable to the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley and Sir John Colleton, their heirs and assigns, although express mention be not made in these presents, of the true yearly value and certainty of the premises, or any part thereof, or of any other gifts and grants made by us, our ancestors, or predecessors, to them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir

William Berkley, and Sir John Colleton, or any other person
104 or persons whatsoever, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, ordained or provided, or any other thing, cause or matter, whatsoever, to the contrary thereof, in any wise notwithstanding. In Witness, &c.

Witness, the King, at Westminster, the four and twentieth day of March, in the fifteenth year of our reign, (1663).

Per IPSUM REGEM.

2.

The Second Charter Granted by King Charles the Second to the Lords Proprietors of Carolina.

Charles the Second, by the Grace of God King of England, Scotland, Ireland, France, Defender of the Faith, &c.:

1st. Whereas by our letters patent, bearing date the four and twentieth day of March, in the fifteenth year of our reign, we were graciously pleased to grant unto our right trusty and right well beloved cousin and Counsellor, Edward, Earl of Clarendon, our high Chancellor of England, our right trusty and right intirely beloved cousin and Counsellor, George, Duke of Albemarle, Master of our horse, our right trusty and well-beloved William, now Earl of Craven, our right trusty and well beloved Counsellor, John, Lord Berkley, our right trusty and well beloved Counsellor, Anthony, Lord Ashley, Chancellor of our Exchequer, our right trusty and well beloved Counsellor, Sir George Carteret, Knight and Baronet,

105 Vice-Chamberlain of our household, our right trusty and well beloved Sir John Colleton, Knight and Baronet, and *and* Sir William Berkley, Knight, all that Province, territory, or tract of ground, called Carolina, seituat, lying and being within our dominions of America, extending from the north-end of the island called Luke-island, which lieth in the Southern Virginia Seas, and within six and thirty degrees of the Northern latitude, and to the west as far as the South Seas, and so respectively, as far as the river of Mathias, which bordereth upon the coast of Florida, and within one and thirty degrees of the Northern latitude, and so west in a direct line, as far as the South-seas aforesaid.

2d. Now ye, that we, at the humble request of the said grantees, in the aforesaid letters patent named, and as a further mark of our especial favour towards them, we are graciously pleased to enlarge our said grant unto them, according to the bounds and limits hereafter specified, and in favour to the pious and noble purpose of the said Edward, Earl of Clarendon, George, Duke of Albermarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, all that Province, territory, or tract of ground, seituat, lying and being within our dominions of America aforesaid, extending north and eastward as far as the north end of Charahake river or gulet, upon a streight westerley line to Wyonoake Creek, which lies within or about the degree of thirty-six, and thirty minutes northern latitude, and so west in a direct line as far as the South-seas; and South and Westward as far as the degrees of twenty-

106 nine inclusive northern latitude, and so west in a direct line, as far as the South seas; together with all and singular ports, harbours, bays, rivers, and islets, belonging unto the Province or territory aforesaid, and also all the soil, lands, fields, woods, mountains, fernes, lakes, rivers, bays and islets, scituat or being within the

bounds or limits last before mentioned; with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes, in the sea, bays, islets and rivers, within the premises, and the fish therein taken, together with the royalty of the sea, upon the coasts within the limits aforesaid. And moreover all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems, and precious stones, and all other whatsoever, be it of stones, metall, or any other thing found or to be found within the Province, territory, islets and limits aforesaid.

3d. And furthermore, the patronage and advowsons, of all the churches and chappels, which as the Christian religion shall increase within the Province, territory, islets and limits aforesaid, shall happen hereafter to be erected; together with license and power to build and found churches, chappels, and oratories in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated, according to the Ecclesiastical laws of our kingdom of England, together with all and singular the like, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities and franchises, of what kind soever, within the territory, isles, islets, and limits aforesaid; to have, hold, use, exercise, and enjoy the same as amply, fully, and in as ample manner, as any Bishop of Durham in our Kingdom of England, ever heretofore had, held, used or enjoyed, or of right ought or
 107 could have, use, or enjoy; and them, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns; we do by these presents, for us, our heirs and successors, make, create and constitute, the true and Absolute Lords and Proprietors of the said Province or Territory, and of all other the premises; saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same; To have, hold, possess and enjoy the said Province, territory, Isles, Islets, and all and singular other the Premises, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns forever, to be holden of us, our heirs and successors, as of our Mannor of East Greenwich in Kent, in free and common Socceage, and not in capite, or by Knight service; yielding and paying yearly to us, our heirs and successors, for the same, the fourth part of all gold and silver ore, which, within the limits hereby granted, shall from time to time happen to be found, over and besides the yearly rent of twenty marks, and the fourth part of the gold and silver ore, in and by the said recited letters patents, reserved and payable.

4th. And that the Province or territory hereby granted and described, may be dignified with as large Titles and Priviledges as any other parts of our Dominions and territories in that region, Know ye, that we of our further grace, certain knowledge, and meer

108 motion, have thought fit to annex the same tract of ground and territory, unto the same Province of Carolina; and out of the fullness of our royal power and prerogative, we do for us, our heirs and successors, annex and unite the same to the said Province of Carolina. And forasmuch as we have made and ordained the aforesaid Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, the true Lords and Proprietors of all the Province or territory aforesaid; Know ye, therefore, moreover, that we, reposing especial trust and confidence in their Fidelity, Wisdom, Justice and provident Circumspection, for us our heirs and successors, do grant full and absolute power by virtue of these presents, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, and their heirs and assigns, for the good and happy Government of the said whole Province or territory, full power and authority to erect, constitute, and make several counties, baronies and colonies, of and within the said Provinces, territories, lands and hereditaments, in and by the said recited letters patents, and these presents, granted or mentioned to be granted as aforesaid, with several and distinct jurisdiction, powers, liberties and privileges; and also, to ordain, make and enact, and under their seals to publish any laws and constitutions whatsoever, either appertaining to the publick state of the said whole Province or territory, or of any distinct or particular county, barony, or colony of, or within the same, 109 or to the private utility of particular persons, according to their best discretion, by, and with the advice, assent and approbation of the Freemen of the said Province or territory, or of the Freemen of the county, barony, or colony, for which such law or constitution shall be made, or the greater part of them, or of their Delegates or Deputies, whom for enacting of the said laws, when and as often as need shall require, we will that the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, and their heirs and assigns, shall from time to time assemble, in such manner and form as to them shall seem best, and the same laws duly to execute upon all people within the said Province or territory, county, barony, or colony, and the limits thereof, for the time being, which shall be constituted under the power and government of them, or any of them, either sailing towards the said Province or territory of Carolina, or returning from thence towards England, or any other of our, or foreign dominions, by imposition of penalties, imprisonment, or any other punishment; yea, if it be needful, and the quality of the offence require it, by taking away member and life, either by them, the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, and their heirs, or by them or their Deputies, Lieutenants,

Judges, Justices, Magistrates, Officers or Ministers, to be ordained and appointed according to the true tenour and intention of these presents; and likewise to erect or make any court, or courts whatsoever, of judicature or otherwise, as shall be requisite; and to

110 appoint and establish any Judges or Justices, Magistrates or Officers whatsoever, as well within the said Province as at sea, in such manner and form as unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, and their heirs, shall seem most convenient; also to remit, release, pardon and abolish, (either before judgment or after) all crimes and offences whatsoever, against the said laws, and to do all and every other thing and things, which unto the compleat establishment of justice unto courts, sessions, and forms of judicature and manners of proceedings therein do belong, although in these presents express mention is not made thereof: and by Judges by him or them delegated, to award process, hold pleas, and determine in all the said Courts, and places of Judicature, all actions, suits and causes whatsoever, as well Criminal as civil, real, mixt, personal, or of any other kind or nature whatsoever; which laws, so as aforesaid to be published, our pleasure is, and we do enjoin, require and command, shall be absolutely firm and available in law, and that all the liege people of us, our heirs and successors, within the said Province or territory, do observe and keep the same inviolably in those parts, so far as they concern them, under the pains and penalties therein expressed, or to be expressed; provided nevertheless, that the said laws be consonant to reason, and as near as may be conveniently, agreeable to the laws and customs of this our realm of England.

5th. And because such assemblies of freeholders cannot be so suddenly called, as there may be occasion to require the same.

111 we do, therefore, by these presents, give and grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, by themselves or their magistrates, in that behalf lawfully authorized, full power and authority, from time to time to make and ordain fit and wholesome Orders and Ordinances, within the Province or territory aforesaid, or any county, barony, or province, of or within the same, to be kept and observed as well for the keeping of the peace as for the better government of the people there abiding, as to publish the same to all, to whom it may concern; which ordinances we do by these presents, streightly charge and command to be inviolably observed, within the same Province, counties, territories, baronies and provinces; under the penalties therein expressed, so as such ordinances be reasonable, and not repugnant or contrary, but as near as may be, agreeable to the laws and statutes of this our Kingdom of England, and so as the same ordinances do not extend to the binding, charging or taking away

of the right or interest, of any person or persons in their freehold, goods, or chattels whatsoever.

6th. And to the end, the said Province or territory may be the more happily increased, by the multitude of people resorting thither, and may likewise be more strongly defended from the incursions of salvages and other enemies, pirates and robbers; therefore we for us, our heirs, and successors, do give and grant by these presents, power, license, and liberty unto all the liege people of us our heirs and successors, in our Kingdom of England, or elsewhere, within

112 any other our dominions, islands, colonies and plantations, (excepting those who shall be especially forbidden) to transport themselves and families, into the said province, or territory with convenient shipping and fitting provisions, and there to settle themselves, dwell and inhabit, any law, act, statute, ordinance, or other thing, to the contrary, in any wise notwithstanding.

7th. And we will also, and of our special grace, for us our heirs and successors, do streightly enjoin, ordain, constitute, and command, that the said Province or territory, shall be of our allegiance, and that all and singular, the subjects and liege people of us, our heirs and successors, transported or to be transported into the said Province, and the children of them, and such as shall descend from them, there born or hereafter to be born, be, and shall be denizens and lieges of us, our heirs and successors of this our Kingdom of England, and be in all things, held, treated, and reputed as the liege faithful people of us, our heirs and successors, born within this our said Kingdom, or any other of our Dominions, and may inherit, or otherwise purchase and receive, take, hold, buy and possess any lands, tenements, or hereditaments, within the said places, and them may occupy, and enjoy, sell, alien, and bequeathe; as likewise all liberties, franchises, and privileges of this our Kingdom, and of other our dominions, aforesaid, may freely, and quietly, have, possess, and enjoy, as our liege people born within the same, without the molestation, vexation, trouble or grievance of us, our heirs and successors, any act, statute, ordinance, or provision to the contrary, notwithstanding.

113 8th. And furthermore, that our subjects of this our said Kingdom of England, and other our Dominions, may be rather encouraged to undertake this expedition, with ready and cheerful minds; know ye, that we of our especial grace, certain knowledge and meer motion, do give and grant, by vertue of these presents, as well to the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, and their heirs, as unto all others as shall from time to time, repair unto the said Province or territory, with a purpose to inhabit there, or to trade with the natives thereof, full liberty and license, to trade and freight, in every port whatsoever, of us, our heirs and successors, and into the said Province of Carolina, by them, their servants and assigns, to transport all and singular, their goods,

wares, and merchandises, as likewise all sorts of grain whatsoever, and any other thing whatsoever, necessary for their food and clothing, not prohibited by the laws and statutes of our Kingdom and Dominions, to be carried out of the same, without any lett, or molestation, of us, our heirs and successors, or of any other our officers or ministers whatsoever, saving also to us, our heirs and successors, the customs and other duties and payments, due for the said wares and merchandises, according to the several rates of the places, from whence the same shall be transported.

9th. We will also, and by these presents, for us, our heirs and successors do give and grant license by this our charter unto the said

Edward, Earl of Clarendon, George, Duke of Albemarle,

114 William, Earl of Craven, John, Lord Berkley, Anthony, Lord

Ashley, Sir George Carteret, Sir John Colleton, and Sir William

Berkley, their heirs and assigns, and to all the inhabitants, and dwellers, in the Province or territory aforesaid, both present and to

come, full power and absolute authority to import or unlade, by themselves or their servants, factors or assigns, all merchandizes, and goods whatsoever, that shall arise of the fruits and commodities of the

said Province or territory, either by land or sea, into any the ports, of us, our heirs and successors, in our Kingdom of England, Scotland,

or Ireland, or otherwise to dispose of the said goods, in the said ports; and if need be, within one year next after the unlading, to lade the

said merchandizes, and goods again, into the same, or other ships, and to export the same into any other countries, either of our Dominions

or foreign, being in amity with us, our heirs and successors, so as they pay such customs, subsidies and other duties for the same, to us, our

heirs and successors, as the rest of our subjects of this our Kingdom, for the time being, shall be bound to pay, beyond which we will not

that the inhabitants of the said Province, or territory, shall be any way charged. Provided nevertheless, and our will and pleasure is,

and we have further, for the considerations aforesaid, of our special grace, certain knowledge, and meer motion, given and granted, and

by these presents, for us our heirs and successors, do give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle,

William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley,

their heirs and assigns, full and free license, liberty, power,

115 and authority, at any time or times, from and after the feast of St. Michael the Arch Angel, which shall be in the year of our Lord Christ one thousand, six hundred, sixty and seven, as well to import and bring into any our Dominions, from the said Province of Carolina, or any part thereof, the several goods and commodities, hereinafter mentioned; that is to say, silk, wines, currans, raisins, capers, wax, almonds, oyl, and olives, without paying or answering to us, our heirs and successors, any custom, import or other duty, for, or in respect thereof, for and during the time and space of seven years, to commence and be accomplished, from and after the first importation of four tons of any the said goods, in any one Bottom, Ship or Vessel, from the said Province or territory, into any of our Dominions; as

also to export and carry out of any of our dominions, into the said Province or territory custom free, all sorts of tools, which shall be usefull and necessary for the planters there. in the accommodation and improvement of the premises, any thing before, in these presents contained, or any law, act, statute, prohibition, or other matter or thing heretofore had, made, enacted, or provided, or hereafter to be had, made, enacted or provided. in any wise notwithstanding.

10th. And furthermore, of our more ample and especial grace, certain knowledge, and meer motion, we do for us, our heirs and successors, grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and

116 Sir William Berkley, their heirs and assigns, full and absolute power and authority, to make, erect and constitute, within the said Province or territory, and the isles and islets, aforesaid, such and so many seaports, harbours, creeks and other places for discharge and unloading of goods and merchandizes, out of ships, boats and other vessels, and for lading of them in such and so many places, and with such jurisdictions, priveledges, and franchises unto the said ports belonging, as to them shall seem most expedient; and that all and singular the ships, boats and other vessels which shall come for merchandizes, and trade into the said Province or territory, or shall depart out of the same, shall be laden and unladen at such ports only, as shall be erected and constituted by the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, and not elsewhere, any use, custom or any thing to the contrary, in any wise notwithstanding.

11th. And we do furthermore, will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, that they the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, may from time to time forever, have and enjoy the customs, and subsidies in the ports, harbors, creeks, and other places within the

117 Province aforesaid, payable for the goods, merchandizes, and wares, there laded, or to be laded or unladed, the said customs to be reasonably assessed upon any occasion, by themselves, and by and with the consent of the free people, or the greater part of them as aforesaid, to whom we give power by these presents, for us, our heirs and successors, upon just cause, and in a due proportion, to assess and impose the same.

12th. And further of our special grace, certain knowledge, and meer motion, we have given, granted, and confirmed, and by these

presents, for us, our heirs and successors, do give, grant and confirm unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, full and absolute power, license and authority, that the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, from time to time, hereafter forever, at his or their will and pleasure, may assign, alien, grant, demise, or enfeof the premises, or any part or parcel thereof, to him or them that shall be willing to purchase the same, and to such person or persons, as they shall think fit, to have and to hold, to them the said person or persons, their heirs and assigns, in fee simple, or in fee taylor, or for the term of life, or lives, or years, to be held of them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord

118 Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, and their heirs and assigns, by such rents, services and customs, as shall seem fit to them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, and not of us, our heirs and successors; and to the same person or persons, and to all and every of them, we do give and grant by these presents, for us our heirs and successors, license, authority and power, that such person or persons, may have and take the premises, or any parcel thereof, of the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, and the same to hold, to themselves, their heirs or assigns, in what estate of inheritance soever, in fee simple or in fee taylor, or otherwise, as to them the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, shall seem expedient; the statute in the Parliament of Edward, son of King Henry, heretofore King of England, our predecessor, commonly called the statute of "quia emptores terrarum," or any other statute, act, ordinance, use, law, custom, or any other matter, cause or thing, heretofore published or provided to the contrary in any wise, notwithstanding.

13th. And because many persons born and inhabiting in the said Province, for their deserts and services, may expect and be
119 capable of marks of honour, and favour, which in respect to the great distance, cannot be conveniently conferred by us: our will and pleasure therefore is, and we do by these presents, give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William

Berkley, their heirs and assigns, full power and authority to give and confer, unto and upon such of the inhabitants of the said Province or territory, as they shall think, do or shall merit the same, such marks of favour and titles of honour, as they shall think fit; so as their titles or honours, be not the same as are enjoyed by, or conferred upon, any of the subjects of this our Kingdom of England.

14th. And further, also, we do by these presents, for us, our heirs and successors, give and grant license to them, the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, full power, liberty and license to erect, raise and build within the said province and places aforesaid, or any part or parts thereof, such, and so many forts, fortresses, castles, cities, burroughs, towns, villages and other fortifications whatsoever, and the same, or any of them, to fortify and furnish with ordinance, powder, shot, armour, and all other weapons, ammunition and habilements of war, both defensive and offensive, as shall be thought fit and convenient, for the safety and welfare of the said Province and places, or any part

120 thereof, and the same, or any of them, from time to time, as occasion shall require, to dismantle, disfurnish, demolish and pull down; and also to place, constitute and appoint, in or over all or any of the said castles, forts, fortifications, cities, towns and places aforesaid, Governours, deputy Governours, Magistrates, Sheriffs, and other officers, civil and military, as to them shall seem meet; and to the said cities, burroughs, towns, villages, or any other place or places within the said Province or territory, to grant letters or charters of incorporations, with all the liberties, franchises and privileges, requisite or usual, or to or within this our Kingdom of England, granted or belonging; and in the same cities, burroughs, towns, and other places, to constitute, erect and appoint such and so many markets, marts and fairs, as shall in that behalf, be thought fit and necessary; and further also, to erect and make, in the Province or territory aforesaid, or any part thereof, so many mannors, with such Signories as to them shall seem meet and convenient, and in every of the said mannors, to have and to hold a Court Baron, with all things whatsoever, which to a court Baron do belong; and to have and to hold, views of franck pledge, and court leet, for the conservation of the peace and better government of those parts, with such limits, jurisdictions, and precincts, as by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, or their heirs, shall be appointed for that purpose, with all things whatsoever, which to a

121 court leet or view of franck pledge do belong; the same courts to be holden by stewards, to be deputed and authorized by the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berk-

ley, or their heirs, by the Lords of the manners and leets, for the time being, when the same shall be erected.

15th. And because that in so remote a country, and scituate among so many barbarous nations, the invasions as well of salvages as other enemies, pirates and robbers, may probably be feared, therefore we have given, and for us, our heirs and successors, do give power by these presents, until the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs or assigns, by themselves or their captains, or other officers, to levy, muster, and train up, all sorts of men, of what conditions soever, or wheresoever born, whether in the said Province or elsewhere, for the time being, and to make war and pursue the enemies aforesaid, as well by sea as by land, yea, even without the limits of the said province, and by God's assistance, to vanquish and take them, and being taken, to put them to death by the law of war, and to save them at their pleasure, and to do all and every other thing, which to the charge and office of a captain general of an army belongeth, or hath accustomed to belong, as fully and freely as any captain general of an army hath had the same.

122 16th. Also, our will and pleasure is, and by this our charter, we give and grant unto the said Edward Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, full power, liberty and authority, in case of rebellion, tumult or sedition (if any should happen, which God forbid) either upon the land within the province aforesaid, or upon the main sea, in making a voyage thither or returning from thence, by him and themselves, their captains, deputies, or officers, to be authorized under his or their seals, for that purpose, to whom, also, for us, our heirs and successors, we do give and grant by these presents, full power and authority to exercise martial law, against mutinous and seditious persons, of those parts, such as shall refuse to submit themselves to their government, or shall refuse to serve in the wars, or shall fly to the enemy, or forsake their colours, or ensigns, or be loyterers, or stragglers, or otherwise howsoever offending against law, custom, or military discipline, as freely, and in as ample manner and form as any captain general of an army, by virtue of his office, might or hath accustomed to use the same.

17th. And our further pleasure is, and by these presents, for us, our heirs and successors, we do grant unto the said Edward, Earl of Clarendon; George, Duke of Albemarle; William, Earl of Craven; John, Lord Berkley; Anthony, Lord Ashley; Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, and to all the tenants and inhabitants of the said province or territory, both present and to come, and to every of them, that

123 the said province or territory, and the tenants and inhabitants thereof, shall not from henceforth be held or reputed a member or part of any colony whatsoever in America, or elsewhere, now transported or made, or hereafter to be transported or made; nor shall be depending on or subject to their government in any thing, but be absolutely separated and divided from the same; and our pleasure is, by these presents, that they be separated, and that they be subject immediately to our crown of England, as depending thereof forever; and that the inhabitants of the said province or territory, nor any of them, shall at any time hereafter be compelled, or compellable, or be any ways subject or liable, to appear or answer to any matter, suit, cause or plaint whatsoever, out of the province or territory aforesaid, in any other of our islands, colonies, or dominions in America, or elsewhere, other than in our realm of England, and dominion of Wales.

18th. And because it may happen that some of the people and inhabitants of the said Province cannot in their private opinions conform to the publick exercise of religion, according to the liturgy, form and ceremonies, of the church of England, or take and subscribe, the oaths, and articles, made and established in that behalf, and for that the same, by reason of the remote distances of those places, will, as we hope, be no breach of the unity and conformity established in this nation. our will and pleasure therefore is, and we do by these presents, for us our heirs and successors, give and grant unto the said Edward, Earl of Clarendon; George, Duke of Albemarle; William, Lord Craven; John, Lord Berkley; Anthony, Lord Ashley; Sir George Carteret, Sir John Colleton, and Sir

124 William Berkley, their heirs and assigns, full and free license, liberty and authority, by such ways and means as they shall think fit, to give and grant unto such person and persons, inhabiting and being within the said province or territory, hereby or by the said recited letters patents, mentioned to be granted as aforesaid, or any part thereof, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations, and restrictions, as they, the said Edward, Earl of Clarendon; George, Duke of Albemarle; William, Earl of Craven; John, Lord Berkley; Anthony, Lord Ashley; Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns, shall in their discretion think fit and reasonable, and that no person or persons, unto whom such liberty shall be given, shall be any way molested, punished, disquieted or called in question, for any difference in opinion or practice, in matters of religious concernment, who do not actually disturb the civil peace of the province, county, or colony, that they shall make their abode in; but all and every such person and persons may, from time to time, and at all times, freely and quietly have and enjoy his or their judgments and consciences in matters of religion, throughout all the said province or colony, they behaving peaceably, and not using this liberty to licentiousness, nor to the civil injury or outward disturbance of others; any law, statute, or clause contained or to be contained,

usage or customs of our realm of England to the contrary hereof, in any wise notwithstanding.

19th. And in case it should happen that any doubts or questions should arise, concerning the true sense and understanding of any word, clause, or sentence, contained in this our present charter, we will, ordain and command, that all times, and in all
125 things, such interpretation be made thereof, and allowed in all and every of our courts whatsoever, as lawfully may be adjudged most advantageous and favorable to the said Edward, Earl of Clarendon; George, Duke of Albemarle; William, Earl of Craven; John, Lord Berkley; Anthony, Lord Ashley; Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns, although express mention, &c.

Witness, Our Self, at Westminster, the thirtieth day of June, in the seventeenth year of our reign (1665).

Per IPSUM REGEM.

3.

Anno Secundo Georgii II.

Regis.

Ch. 34, Anno Domini 1729.

An Act, for Establishing an Agreement with Seven of the Lords-Proprietors of Carolina for the Surrender of their Title and Interest in That Province to His Majesty.

Whereas his late Majesty King Charles the second, by his letters patent under the great seal of Great Britain, bearing date at Westminster, in the fifteenth year of his reign, did grant and confirm unto Edward, then Earl of Clarendon, George, then Duke of Albemarle, William, then Lord Craven, John, then Lord Berkley, Anthony, then Lord Ashley, Sir George Carteret, Knight and Baronet, Sir William Berkley, and Sir John Colleton, Knt. and Baronet, all since deceased, their heirs and assigns, all that Territory or tract of ground, situate,

126 lying and being within his said late Majesty's dominions in America, extending from the North end of the island called Luckar island, which lieth in the Southern Virginia seas, and within six and thirty degrees of the Northern latitude, and to the West as far as the South seas, and so southerly as far as the river St. Matthias, which bordereth upon the Coast of Florida, and within one and thirty degrees of Northern latitude, and so West in a direct line as far as the South seas aforesaid, together with all and singular ports, harbours, bays, rivers, isles and islets, belonging unto the country aforesaid, and also all the soil, lands, fields, woods, mountains, farms, lakes, rivers, bays and islets, situate, or being within the bounds or limits aforesaid, with the fishing of all sorts of fish, whales and sturgeons, and all other royal fishes, in the seas,

bays, islets and rivers within the premises, and the fish therein taken, and moreover all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, and all other whatsoever, whether of stones, metals or any other thing whatsoever, found or to be found, within the country, isles, and limits aforesaid, and also the patronages and advowsons of all churches and chappels, which as Christian religion should increase within the country, isles, islets and limits aforesaid, should happen thereafter to be erected, together with license and power to build and found churches, chappels and oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated, according to the Ecclesiastical laws of the Kingdom of England, together with all and singular the like and so ample rights, jurisdictions, privileges, royalties, prerogatives, liberties, immunities and franchises of what kind soever, within the

127 country, isles, and limits aforesaid, to have, use, exercise, and enjoy, and in as ample manner as any Bishop of Durham in the Kingdom of England, ever theretofore had, held, used or enjoyed, or of right ought or could have, use or enjoy; and his said late Majesty did thereby for himself, his heirs and successors, make, create, and constitute the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns, the true and absolute Lords and Proprietors of the country aforesaid, and all others the premises, (saving as therein is mentioned,) to have, hold, possess, and enjoy, the said country, isles, islets, and all and singular, other the premises, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir William Berkley, and Sir John Colleton, their heirs and assigns forever, to be holden of his late said Majesty, his heirs and successors, as of his manor of East Greenwich in the county of Kent, in free and common soccage, and not in capite, or by knight's service: And whereas, his late said Majesty King Charles the second, by other letters patent, under the great seal of England, bearing date the thirtieth day of June, in the seventeenth year of his Reign, reciting the letters patent herein first recited, did grant unto the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Lord Craven, then Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berkley, their heirs and assigns.

128 all that Province, territory or tract of ground, situate, lying, and being within his said late Majesty's Dominions of America, extending North and Eastward, as far as the North end of Carah-tuke River or Gullet, upon a strait Westerly line to Wyonake Creek, which lies within or about the degrees of thirty six and thirty minutes North Latitude, and so West in a direct line as far as the South Seas, and South and Westward, as far as the degrees of twenty-nine inclusive, Northern latitude, and so West in a direct line, as far as the South Seas, together with all and singular ports, harbours, bays, rivers and islets belonging unto the Province or Territory

aforesaid, and also all the soil, lands, fields, woods, farms, lakes, rivers, bays or islets situate or being within the bounds or limits aforesaid last before, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the seas, bays, islets, and rivers, within the Premises, and the fish therein taken, together with the royalty of the sea upon the coast, within the limits aforesaid, and all veins, mines and quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, and all other whatsoever, be it of stones, metals, or any other things, found or to be found, within the Province, territory, islets and limits aforesaid, and furthermore the patronages and advowsons of all churches and chappels, which as Christian religion should increase within the Province, territory, isles and limits aforesaid, should happen thereafter to be erected, together with license and power to build and found churches, chappels, and oratories in convenient and fit places

129 within the said bounds and limits, and to cause them to be dedicated and consecrated according to the Ecclesiastical laws of the Kingdom of England, together with all and singular the like, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities and franchises of what kind soever, within the territories, isles, islets, and limits aforesaid, to have, hold, use, exercise and enjoy the same, as amply and fully and in as ample manner, as any Bishop of Durham in the Kingdom of England ever thentofore had, held, used or enjoyed, or of right ought or could have, use or enjoy; and his said late Majesty, did thereby for himself, his heirs and successors, make, create, constitute and appoint them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton, and Sir William Berley, their heirs and assigns, the true and absolute Lords and Proprietors of the said Province or territory, and of all other the premises, (saving as therein is mentioned,) to have, hold, possess and enjoy the said Province, territory, islets, and all and singular other the premises, to them the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony, Lord Ashley, Sir George Carteret, Sir John Colleton and Sir William Berkley, their heirs and assigns forever, to be holden of his said Majesty, his heirs and successors, as of his manor of East Greenwich aforesaid, in free and common soccage, and not in capite, or by Knight's service, as in and by the said several late recited letters patent, relation being thereunto had, may appear;

130 And whereas, the part, share, interest and estate of the said Edward, late Earl of Clarendon, of and in the Provinces, territories, islets hereditaments and premises, in and by the said several recited letters patent granted and comprised, is now come unto and vested in the Honorable James Bertie, of the Parish of St. John the Evangelist, in the liberty of Westminster, in the county of Middlesex, Esquire, of his own Right; and the part, share, interest, and estate, of the said George, late Duke of Albemarle, of and in the same premises, is come unto and vested in the most noble Henry now Duke of Beauford, and in the said James Bertie, and

the Honourable Dodington Greville, of Bulford, in the county of Wiltz, Esquire, the two surviving Devises, named in the will of the most noble Henry late Duke of Beauford, in trust for the present Duke of Beauford, and for the right honourable Charles Noell Somerset, his brother, an infant; and the part, share, interest, and estate of the said William, late Earl of Craven, of and in the same premises, is come unto and vested in the right Honourable William now Lord Craven; and the part, share, interest and estate, of the said John late Lord Berkley, of and in the same premises, is now come unto and vested in Joseph Blake, of the Province of South Carolina, in America, Esquire; and the part, share, interest and estate of the said Anthony, late Lord Ashley, of and in the same premises, is now come unto and vested in Archibald Hutcheson, of the Middle Temple, London, Esquire, (in trust for John Cotton of the Middle Temple, London, Esquire,) and the part, share, interest and estate of the said late Sir John Colleton, of and in the said premises, is now come unto and vested in Sir John Colleton, of Exmouth, in the county of Devon, Baronet; and the part, share, interest and

131 estate of the said late Sir William Berkley, of and in the same premises, is now come unto and vested in the Honourable Henry Bertie, of Dorton, in the county of Bucks, Esquire, or in Mary Danson, of the Parish of St. Andrews, Holbourne, in the county of Middlesex, Widow, or in Elizabeth Moor, of London, Widow, some or one of them; and the said Henry now Duke of Beauford, and the said James Bertie and Dodington Greville, as trustees in manner aforesaid, some or one of them, is or are seized in fee of and in one full undivided eighth part, (the whole into eight equal parts to be divided) of the premises, in and by the said recited letters patent, granted and comprized; and the same James Bertie, in his own Right, is now seized in fee, or of some other estate of inheritance, of and in one other full undivided eighth part; and each of them the said William Lord Craven, Joseph Blake, Archibald Hutcheson, as trustees for the said John Cotton, Sir John Colleton, and the said Henry Bertie, Mary Danson, and Elizabeth Moor, some or one of them, is or are respectively seized in fee, or of some other estate of inheritance, of and in one other full undivided eighth part, of and in the said Provinces, territories, and premises, islands, and hereditaments; the remaining eighth part or share of and in the said Provinces, territories and premises, which formerly belonging to the said Sir George Carteret, being now vested in the right Honourable John Lord Carteret, Baron of Hawes, his majesty's Lieutenant General and Governour of the Kingdom of Ireland; And whereas, by a Judgement or Order of the House of Lords, made the twenty-seventh day of March, last past, upon the appeal of the said Mary

Danson, Widow of John Danson, Esquire, deceased, from a
132 decree of the high Court of Chancery, made the seventh day of November one thousand seven hundred and twenty-one, and from a subsequent order of the fifteenth day of January, one thousand, seven hundred and twenty-three, it was ordered and adjudged, that the said decree and subsequent order, complained of in the said appeal, should be reversed; and it being offered on the

part of the appellant, to pay the respondent, the said Henry Bertie, the money that he paid for the purchase of the Proprietorship, in question in the said cause, together with interest for the same, it was thereby further ordered, that the Court of Chancery should direct and cause an enquiry to be made, what was the principal sum of such purchase money, and from the time of payment thereof, to compute the interest for the same; and on the appellant's payment of what shall be found due for such principal money and interest, to the said Henry Bertie, it was further ordered and adjudged, That he shall convey the said Proprietorship, to her and her heirs, and also that the respondent Elizabeth Moor, should likewise by proper conveyances, at the charge of the appellant, convey all her Right to the said Proprietorship, to the appellant, and her heirs; And whereas, since the making of the said recited several letters patent, the Lords Proprietors of the Provinces and Territories aforesaid, for the time being, have made divers grants and conveyances, under their common seal, of several Offices, and also of divers parcels of land, situate within the said Provinces and territories, to several persons, under certain quit-rents, or other rents, thereby respectively reserved, and subject to several conditions, limitations or

133 agreements, for avoiding or determining the estates of the Grantees therein mentioned, some of which may have become forfeited, and have also made divers grants of several Baronies, or large tracts of land, lying within the said Provinces or Territories, unto and for the use and benefit of several of the Lords Proprietors, or those under whom they claim to be held and enjoyed by them and their heirs in severalty; eight of which Baronies, so granted as aforesaid, do now remain vested in the said Henry now Duke of Beauford, or in the said James Bertie and Dodington Greville, as trustees for the purposes aforesaid, or in some or one of them; eight other of the said Baronies in the said William Lord Craven; six of the said Baronies in the present Sir John Colleton; six other Baronies in the said Archibald Hutcheson, (as trustee for the said John Cotton;) and six other Baronies in the said Joseph Blake; each of the said Baronies containing or being mentioned or intended to contain twelve thousand acres of land, or thereabouts, except one of the said Baronies now vested in the said William Lord Craven, which contains, or is mentioned to contain eleven thousand acres of land or thereabouts; And whereas, the said Henry, now Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Sir John Colleton, and Archibald Hutcheson, (who is trustee for the said John Cotton, as aforesaid,) being six of the present Lords Proprietors of the Province and territory aforesaid, have by their humble petition, to his Majesty in Council, offered and proposed to surrender to his Majesty, their said respective shares and interests, not only of and in the said Government, Franchises and Royalties, in and by the said recited letters patent granted, but also all the right and property they have in and to the soil in the aforesaid Provinces or territories, under the said several recited letters patent, or

134 either of them; and also did further propose to make an entire surrender to his Majesty of their right to all the lands which they hold

under the said grants, made by the Lords Proprietors as aforesaid, (except only one Barony, belonging to the present Sir John Colleton, which hath been settled and improved by his son) and also all their right and interest in all lands, granted and conveyed to other persons as aforesaid, which, by not being improved within the time limited in the said grants or conveyances, or for any other reason, would revert to them, praying; That in consideration of such surrender, his Majesty would be pleased to direct, and to cause to be paid to each of them, the said Henry Duke of Beauford, William Lord Craven, James Bertie, Henry Bertie, Sir John Colleton, and Archibald Hutcheson, the sum of two thousand five hundred pounds a-piece, without any deduction; And whereas, Samuel Wragg, of London, Merchant, being duly authorized by letter of Attorney, under the hand and seal of the said Joseph Blake, bearing date the eleventh day of July, one thousand seven hundred and twenty-eight, hath proposed for and on the behalf of the said Joseph Blake, to surrender and convey unto his Majesty, his heirs and successors, all the estate, right and interest of the said Joseph Blake, in and to the premises, upon payment of the like sum of two thousand five hundred pounds, to the said Joseph Blake, without any deduction; And whereas, they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Sir John Colleton and Archibald Hutcheson, who is a trustee for the said John

135 Cotton as aforesaid, have laid before a Committee of the Lords of his Majesty's most honourable privy council, an estimate of all the Arrears of quit rents and other rents, and sum and sums of money now due and owing to them and the said Joseph Blake, and to the said John, Lord Carteret, which estimate, as computed, amounts to the sum of nine thousand five hundred pounds; and they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Sir John Colleton, and Archibald Hutcheson, have likewise humbly proposed; That if his Majesty would please to allow the sum of five thousand pounds for the said arrears, (over and above the said several sums of two thousand five hundred pounds, to — paid to them respectively) they were willing to assign and make over to his Majesty, the right and title to the said arrears, and all other demands whatsoever, which they have or can have, upon the farmers, tenants or inhabitants of the Provinces or territories aforesaid, or of any of them; And whereas, the said Samuel Wragg, for and on behalf of the said Joseph Blake, hath proposed to assign to his Majesty, all the right and interest of the said Joseph Blake, in and to the said arrears and demands, upon the terms aforesaid; And whereas his Majesty, taking into his royal consideration the great importance of the said Provinces and territories, to the trade and navigation of this kingdom, and being desirous to promote the same, as well as the welfare and security of the said Provinces and territories, by taking them under the more immediate Government of his Majesty, his heirs and successors, hath

136 been graciously pleased to accept of the said several proposals, and to agree to the same, with such variations as are herein-after mentioned; And whereas, from the nature of the respec-

tive estates and interests, proposed and agreed to be surrendered to his Majesty as aforesaid, great difficulties may arise in the manner of conveying the same, and it is just and necessary that the parts and shares of the said Provinces and territories, so proposed and agreed to be surrendered, should be secured, to his Majesty, his heirs and successors, which cannot effectually be done and attained without the authority of Parliament; BE IT ENACTED, by the King's most excellent Majesty, by and with the consent and advice of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, that all those seven undivided eighth parts, (the whole into eight equal parts or shares to be divided) and all other the part or share, parts or shares, interest and estates of them the said Henry Duke of Beauford, William Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson and Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, as trustee for the said John Cotton, and Joseph Blake, and each of them, of and in the aforesaid Provinces or territories, called Carolina, and all and singular the royalties, franchises, lands, tenements, and hereditaments and premises, in and by the said several recited letters patent, or either of them, granted or mentioned or intended to be granted, by his said late Majesty, King Charles the second, to the said Edward, Earl of Clarendon, George, Duke of Albemarle, William, Earl of Craven, John, Lord Berkley, Anthony,

Lord Ashley, Sir George Carteret, Sir John Colleton, deceased, 137 and Sir William Berkley, and their heirs and assigns, as aforesaid, with their and every of their rights, members, and appurtenances, and also all such powers, liberties, authorities, jurisdictions, preeminences, licenses, and privileges, as they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, the present Sir John Colleton, the said Archibald Hutcheson, as trustee for the said John Cotton, and Joseph Blake, every or any of them, can or may have, hold, use, exercise or enjoy, by virtue of, or under the said recited letters patent, or either of them, and also all and singular Baronies, tracts, and parcels of land, tenements and hereditaments, which they the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson and Elizabeth Moor, the present Sir John Colleton, the said Archibald Hutcheson, as trustee for the said John Cotton, and Joseph Blake, any or either of them, are or is seized or possessed of, or entitled unto, within the said Provinces or territories; except all such tracts of land, tenements and hereditaments, as have been at any time before the first day of January, one thousand, seven hundred and twenty seven, granted or conveyed by, or comprised in any grants, deeds, instruments or conveyances, under the common seal of the said Lords Proprietors, either in England, or in the Provinces aforesaid; and also, except all such plantations and lands as are now in the possession of the said Joseph Blake, his under tenants or assigns, by virtue of grants formerly made by the said Lords Proprietors of the said Provinces, for the time being, to

other persons, and since conveyed to, or vested in the said
 138 Joseph Blake; And also, except all that Barony and tract of
 land containing twelve thousand acres or thereabouts, the
 possession whereof hath some time since been delivered by the present
 Sir John Colleton, unto Peter Colleton, Esquire, his second son;
 and all that other Barony or tract of land, containing twelve thou-
 sand acres or thereabouts, some time since conveyed by Sir John
 Tyrrel, Baronet, (formerly owner of the said eighth part or share
 now belonging to the said Archibald Hutcheson as trustee for the
 said John Cotton.) to William Wight, Esq. and his heirs: Provided,
 that the before mentioned exceptions or any of them, shall not in-
 clude or extend to any lands, comprised in any grant or grants, made
 either in England or Carolina, under the common seal of the Lords
 Proprietors for the time being, which since the making such grant
 or grants, have become forfeited by virtue of any clauses contained
 therein, or to any of the Baronies, herein before recited or men-
 tioned to be still remaining and vested in the said Henry, Duke of
 Beauford, and in the said James Bertie and Dodington Greville, as
 trustees, some or one of them, and in the said William, Lord Craven,
 the present Sir John Colleton, and the said Archibald Hutcheson,
 as trustee for the said John Cotton, respectively, nor to any rents,
 services, seigniories, or rights to escheats, reserved upon, or incident
 to any such grant or grants, or any lands or estates thereby granted,
 all such forfeited lands, and all such rents, seigniories, and rights
 of escheat, reserved upon or incident to any such grant or grants,
 or any lands and estates thereby granted, and also the Baronies last
 before mentioned, being hereby intended to be vested in the
 139 persons, and for the purposes hereinafter mentioned, and the
 reversion and reversions, remainder and remainders, yearly,
 and other rents, issues, and profits, of the same parts or shares, Baro-
 nies, Lands, tenements, hereditaments and premises, so as aforesaid
 proposed and agreed to be surrendered to his Majesty, and of every
 part and parcel thereof; and also all the estate, title, interest, trust,
 property, right of action, right of entry, claim and demand whatso-
 ever, of them the said Henry, Duke of Beauford, William, Lord
 Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Dan-
 son and Elizabeth Moor, the present Sir John Colleton, the said
 Archibald Hutcheson, John Cotton and Joseph Blake, and each of
 them, of, in, unto or out of the same, every or any part and parcel
 thereof, by virtue of the said several recited letters patent, or either
 of them, or of any grant, assignment, conveyance, or assurance, made
 under, or by force of the same recited letters patent, or either of them,
 or otherwise howsoever, shall, from and after the first day of June,
 one thousand seven hundred and twenty-nine, be vested and settled,
 and the same are hereby vested and settled, in and upon Edward
 Bertie of Gray's Inn, in the county of Middlesex, Samuel Horsey
 of the Parish of St. Martins in the fields, in the county of Middlesex,
 Henry Smith of Caversham, in the county of Oxon, and Alexius
 Clayton, of the Middle Temple, London, Esquires, to the only use
 of them the said Edward Bertie, Henry Smith, Samuel Horsey, and
 Alexius Clayton, their heirs and assigns, freed and discharged and

absolutely acquitted, exempted and indemnified, of and from all estates, uses, trusts, intails, reversions, remainders, limitations, charges and incumbrances, titles, claims, and demands what-

140 soever; But nevertheless upon trust, and to the intent that they the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, and the survivor or the survivors of them, and the heirs of such survivor, upon payment by his Majesty, his heirs or successors, to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, or to the Survivors or to the survivor of them, or the executors or administrators of such survivor, of the sum of seventeen thousand, five hundred pounds, free and clear of all deductions, on or before the twenty-ninth day of September, in the year of our Lord, one thousand, seven hundred and twenty nine, shall and do, by deed, indented, and to be enrolled in his Majesty's high Court of Chancery, surrender, convey, and assure unto his Majesty, his heirs and successors, all and singular, the said seven eighths parts or shares, (the whole into eight equal parts to be divided) and all other the parts or shares, interest and estates, of and in the aforesaid Provinces or territories, and all and singular the premises, hereby vested in them the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, and their heirs as aforesaid, which said sum of seventeen thousand five hundred pounds, they the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, or the executors and administrators of such survivor, shall immediately after receipt thereof, pay, apply, and dispose of in manner hereinafter mentioned; That is to say, the sum of two thousand five hundred pounds, part thereof, to the said James Bertie and Dodington Gre-

141 ville, trustees as aforesaid, or to the survivor of them, or to the executors or administrators of such survivor; two thousand five hundred pounds, other part thereof, to the said William Lord Craven, his executors and administrators; two thousand five hundred pounds, other part thereof, to the said James Bertie, of his own right, his executors or administrators; two thousand five hundred pounds, other part thereof, unto such person or persons, and in such shares and proportions as the same, according to the tenor, purport, and true meaning of the said order or judgment of the House of Lords, ought to be paid and applied; two thousand five hundred pounds, other part thereof, to the said Sir John Colleton, his executors or administrators; two thousand five hundred pounds, other part thereof, to the said John Cotton, his executors or administrators; and two thousand five hundred pounds, the residue thereof, to the said Samuel Wragg, for the use of the said Joseph Blake, or to the said Joseph Blake, his executors or administrators.

And be it further enacted, by the authority aforesaid, that from and after payment of the said sum of seventeen thousand five hundred pounds, to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, or the executors or administrators of such survivor, and after the execution of the said surrender and conveyance to his Majesty, his

heirs and successors, hereby directed to be made as aforesaid, his Majesty, his heirs and successors, shall have, hold, and enjoy, all and singular the said seven eighth parts or shares, (the whole into eight equal parts to be divided) and all other the parts or shares, interests and estates, of and in the aforesaid Provinces or territories, and all and singular the premises hereby vested
 142 in them the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, and their heirs as aforesaid, freed and discharged, and absolutely acquitted, exempted and indemnified of, from and against all estates, uses, trusts, intails, reversions, remainders, limitations, charges, incumbrances, titles, claims and demands whatsoever.

And be it further enacted, by the authority aforesaid that seven eighth parts, (the whole into eight equal parts to be divided) of all and every the said arrears of quit rents, and other rents, sum and sums of money, debts, duties, accounts, reckonings, claims, and demands, whatsoever, now due and owing to them the said Henry, Duke of Beauford, or to the said James Bertie and Dodington Greville, trustees as aforesaid, and to the said John, Lord Carteret, William, Lord Craven, James Bertie in his own right, Henry Bertie, Mary Danson and Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton or Joseph Blake, or any of them, (whether the same be more or less, than is computed as aforesaid) and all and every other parts or shares, of the said Henry, Duke of Beauford, James Bertie and Dodington Greville, trustees as aforesaid, William, Lord Craven, James Bertie in his own right, Henry Bertie, Mary Danson and Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton, and Joseph Blake, or any of them, of or in the said arrears, or which they or any of them, their or any of their heirs, executors, administrators or assigns, now have, or can or may have, claim, challenge or demand of or from the farmers, tenants and inhabitants, of the provinces or territories

aforesaid, or any part thereof, or any of them, shall, from
 143 and after the said first thereof, or any of them, shall, from

and after the said first day of June, in the year of our Lord, one thousand seven hundred and twenty-nine, be vested in the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors and survivor of them, and the executors or administrators of such survivor, upon trust, and to the intent that they the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, and the executors and administrators of such survivor, shall, upon payment by his Majesty, his heirs and successors, of the sum of five thousand pounds of lawful money of Great Britain, free and clear of all deductions, on or before the said twenty ninth day of September, in the said year, to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, the survivors or the survivor of them, or the executors or administrators of such survivor, by deed indented and to be enrolled in his Majesty's High Court of Chancery, grant and assign to his Majesty, his heirs and successors, all and every the said seven eighth parts or shares, (the whole into

eight equal parts or shares to be divided) and all other parts or shares of the said arrears, hereby vested in them the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton.

And whereas, the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Mary Danson, Dodington Greville, Sir John Colleton, John Cotton and Joseph Blake, are desirous that the said sum of five thousand pounds should be applied in manner hereinafter mentioned,

Be it further enacted, by the authority aforesaid, that the sum of five thousand pounds, after receipt thereof, shall be issued
 144 and paid by the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, or the survivors and survivor of them, and the executors and administrators of such survivor, to such of the officers, agents or servants of the Lords Proprietors, or to such other person or persons, and for such purposes as the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Mary Danson, Sir John Colleton, John Cotton, and Joseph Blake, their executors or administrators, or any four or more of them, (the executors or administrators of each of them to be accounted only as one) shall by writing or writings, under their hands, from time to time direct and appoint.

And be it further enacted, by the authority aforesaid, that from and after payment of the said sum of five thousand pounds, unto the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, the survivors or the survivor of them, or the executors or administrators of such survivor, and after the execution of the said grant and assignment of the said parts or shares, of the said arrears, hereby directed to be made as aforesaid, his Majesty, his heirs and successors, shall and may have, receive and enjoy the said seven eighth parts or shares (the whole into eight equal parts to be divided) and all and every other parts and shares of the said arrears of quit rents, and other rents, sum and sums of money, debts, duties, accounts, reckonings, claims and demands, hereby vested in the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, and shall and may have, use and pursue such and the like remedies
 for recovery thereof, as fully and effectually as the said

145 Henry, Duke of Beauford, William, Lord Craven, James Bertie, Henry Bertie, Mary Danson, Dodington Greville, Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, any or either of them, might have had, used or pursued, if this act had not been made.

And be it further enacted, by the authority aforesaid, That the receipt or receipts of the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, the survivors or the survivor of them, or executors or administrators of such survivor, under their hands, or his hand or hands respectively, shall be a sufficient discharge to his Majesty, his heirs and successors, of and for the said several sums of seventeen thousand five hundred pounds, and five thousand pounds, or so much thereof or of either of them, as such receipts or receipt shall be given for; and that his Majesty, his heirs and successors, upon and after such receipts or receipt, given as aforesaid,

shall be absolutely acquitted and discharged of and from the said monies, and shall not be answerable or accountable for any loss, non-application or misapplication of the said money, or of any part thereof.

Provided always, and it is hereby declared and enacted, by the authority aforesaid, that the receipt or receipts of the said James Bertie, or Dodington Greville, or the survivor of them, his executors or administrators, under his or their hand or hands respectively, shall be a sufficient discharge to the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, their executors or administrators, for the said sum of two thousand five hundred pounds, payable to them for the said eighth part or share of the said 146 Provinces, territories, royalties, lands and hereditaments, which was vested in the said Henry late Duke of Beauford, and the said sum of two thousand five hundred pounds, shall be and remain subject to the trusts reposed in them by the will of the said late Duke, or otherwise, concerning the eighth part or share, but the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, their heirs, executors, or administrators, shall not be answerable or accountable for any loss or misapplication thereof, or of any part thereof.

Provided also, and it is hereby declared and enacted, That the said Edward Bertie, Samuel Horsey, Henry Smith, and Alexius Clayton, shall not, nor shall any of them, or the executors or administrators of any of them, be answerable or accountable for any money to be received by virtue of or under the trusts hereby reposed in them, any otherwise than each person, his executors or administrators, for such sum or sums of money as he or they shall respectively actually receive, and none of them shall be answerable or accountable for the acts, receipts, neglects, or defaults of the other of them; and also that they, the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, their executors or administrators, shall and may, out of the money hereby directed to be paid to them as aforesaid, retain and reimburse themselves for all costs, charges, damage and expenses, that they respectively shall sustain or be put unto, in and about the execution of the trusts hereby in them reposed.

And whereas there is due and owing to the King's most excellent Majesty, for arrears of rent reserved by the said several recited letters patent, or one of them, several sums of money, computed to 147 amount to three hundred pounds or upwards; now it is hereby further enacted and declared, by the authority aforesaid, that the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, the present Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, and every of them, their and every of their heirs, executors and administrators, respectively, from and immediately after the said twenty-ninth day of September, one thousand seven hundred and twenty-nine, (in case the said sums of seventeen thousand five hundred pounds, and five thousand pounds, shall then be paid and satisfied, and the sale hereby intended shall be then com-

pleated) shall be, and are hereby fully and absolutely acquitted and discharged of and from all arrears of rent whatsoever, due or owing upon or by virtue of the said recited letters patent, or either of them.

Provided always, and it is hereby further enacted and declared, by the authority aforesaid, that if his Majesty, his heirs and successors, do not or shall not, on or before the said twenty-ninth day of September, one thousand seven hundred and twenty-nine, well and truly pay or cause to be paid, both the several sums of seventeen thousand five hundred pounds, and five thousand pounds in manner aforesaid, and according to the true meaning of this act, that then they the said Edward Bertie, Samuel Horsey, Henry Smith and Alexius Clayton, or the survivors or survivor of them, or the heirs, executors or administrators of such survivor, shall not make such surrender, assignment, or conveyance of the said seven eighth parts or shares of the said Province or territories, and of the said arrears, or

148 either of them, to his Majesty, his heirs or successors, as hereby is directed, but shall from and after the said twenty-ninth day of September, one thousand seven hundred and twenty-nine, stand and be seized of and possessed of all and singular the premises hereby in them vested, to the only proper use and behoof of them, the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, the present Sir John Colleton, John Cotton, and Joseph Blake, and every of them, and of their and every of their heirs, executors, administrators and assigns, in such shares and proportions, and according to such respective rights and interests as they severally had, or could have been entitled to, in and unto the same premises, in case this act had never been made, and to and for no other use or trust, intent or purpose whatsoever.

Saving and reserving to all and every person or persons, bodies politic and corporate, their heirs, successors, executors, administrators and assigns, other than and except the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, their respective heirs, executors or administrators, and the heirs of their respective bodies, and all and every person and persons, claiming or to claim any estate and interest in the premises, or any part thereof, in remainder or reversion, expectant upon or after the determination of any estate tail, vested in them the said Henry, Duke of Beauford, William, Lord Craven, James Bertie, Dodington Greville, Henry Bertie, Mary Danson, Elizabeth Moor, Sir John Colleton, Archibald Hutcheson, John Cotton and Joseph Blake, or any of them,

149 and all and every person and persons claiming, or to claim any estate or interest in the premises, or any part thereof, by or under the title of the said Henry, late Duke of Beauford, deceased, such satisfaction and recompense as is hereinafter mentioned, for all such estate, right, title, interest, property, claim or demand whatsoever, in, to or out of the premises, or any part thereof, as they or any of them, now have, or might have had or been entitled to, in case this act had never been made.

Provided always, and be it further enacted by the authority aforesaid, That if any person or persons (other than and except the persons herein before excepted) who now have or shall have any estate, right, title, interest, claim or demand, either in law or in equity, of, in, to or out of the premises herein vested as aforesaid, or any part thereof, shall, within the space of seven years after the same shall be conveyed unto and vested in his Majesty, his heirs and successors as aforesaid, commence and prosecute any action or suit either in law or equity, by petition of right, English bill or otherwise, against his Majesty, his heirs or successors, or the proper officer or officers on his or their behalf, wherein such persons might or ought to have recovered the premises hereby vested as aforesaid, or any part thereof, or any estate, interest or demand, in or out of the same, the court wherein such suit or action shall be commenced or depending, shall and may adjudge or decree, that such person or persons shall recover against his Majesty, his heirs or successors, such sum or sums of money, as his or their estate, interest or demand in or about the premises hereby vested as aforesaid, shall by the same court be

150 valued at and determined to amount unto, in full satisfaction for such estate, interest or demand; in making which valuation the said court shall estimate one full eighth part of the premises hereby vested as aforesaid, to be of the value of two thousand five hundred pounds, and no more, and shall rate and ascertain the value of such estate, interest or demand, in proportion thereunto.

Saving and reserving always to the said John, Lord Carteret, his heirs, executors, administrators and Assigns, all such estate, right, title, interest, property, claim and demand whatsoever, in, unto or out of, one eighth part or share of the said Provinces or territories, with all and singular the rights, members and appurtenances thereof, and of, in and to one eighth part or share of all arrears of quit rents, and other rents, sum and sums of money, debts, duties, accounts, reckonings, claims and demands whatsoever, now due and owing to the present Lords Proprietors of the said Provinces and territories, and all such other rights, titles, priviledges and powers whatsoever, as the said John, Lord Carteret, his heirs, executors or administrators now have or might have had or been entitled unto, in case this act, and the conveyance herein before directed to be made to his Majesty, his heirs and successors, or either of them, had not been, or should not be made.

Saving also to all and every person and persons having or lawfully claiming any office or offices, place or places, employment or employments, by or under any grant or grants thereof made before the said first day of January, one thousand and seven hundred and twenty-seven, under the common seal of the said Lords Proprietors, either in England or in the Provinces aforesaid, all such estate, right
151 title and interest in or to such office or offices, place and places, employment and employments, as they or any of them now have or might have had, or been entitled unto, in case this Act had never been made.

Section 1, Article 1, Chapter 1, Codification of the Statute Law of Georgia, Prepared by William A. Hotchkiss and Reported to His Excellency George W. Crawford, Governor of the State of Georgia, and to the General Assembly, under Date of November 20th, 1845.

1. Boundary Between Georgia and South Carolina.—Whereas, by an ordinance passed by the legislature of this state, commissioners were appointed and authorized to meet other commissioners, similarly appointed by the State of South Carolina; and whereas the said commissioners, or a majority of them from each state, were vested with full powers to settle all differences, controversies, disputes, and claims, which subsisted between the two states relative to boundary: and whereas they, conformably to those powers, did on the 28th day of April, in the year one thousand seven hundred and eighty-seven in convention at Beaufort, in the State of South Carolina, by certain instruments of writing to which the said commissioners interchangeably set their hands and affixed their seals, make mutual concessions and agreements for the purpose aforesaid: Be it therefore enacted, &c., That whatever was done by the said commissioners, or a majority of them as aforesaid, is hereby ratified, and shall be considered as binding upon the citizens of this state, any law to the contrary notwithstanding.

152 The respondent also offers in evidence and requests the Court to take judicial cognizance of Sections 22 and 23, Article 1, of the Constitution of the State of Georgia, pages 905 and 906, Appendix Prince's Digest, Laws of Georgia, 1837; also pages 1, 2 and 3 of Part 1, J. L. Petigru's Code of Statute Law of South Carolina.

(The papers referred to are as follows:)

The Constitution of the State of Georgia as Amended (Pub'd 1837).

Art. I.

Sec. XXII. The General Assembly shall have power to make all laws and ordinances which they shall deem necessary and proper for the good of the State, which shall not be repugnant to the constitution.

Sec. XXIII. They shall have power to alter the boundaries of the present counties, and to lay off new ones, as well out of the Counties already laid off, as out of the other territory belonging to the State; but the property of the soil, in a free government, being one of the essential rights of a free people, it is necessary, in order to avoid disputes, that the limits of this State should be ascertained with precision and exactness; and this convention composed of the immediate representatives of the people, chosen by them to assert their rights, and to revise the powers given by them to the government, and from whose will all ruling authority of right flows, doth assert and declare the boundaries of this State to be as follows: That is to

say, the limits, boundaries, jurisdictions and authority of the State of Georgia, do, and did, and of right ought to extend from the sea, or the mouth of the river Savannah, along the Northern
153 branch or stream thereof, to the fork or confluence of the rivers now called Tugalo and Keowee, and from thence along

the most northern branch or stream of the said river Tugalo, till it intersects the northern boundary line of South Carolina. If the said branch or stream of Tugalo extends so far north, reserving all the islands in the said Rivers Savannah and Tugalo to Georgia; but if the head spring or source of any branch or stream of the said river Tugalo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi to be drawn from the head spring or source of the said branch or stream or Tugalo river, which extends to the highest northern latitude; thence down the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude; south by a line drawn due east from the termination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the River Apalachicola or Chattahoochee; thence along the middle thereof to its junction with Flint river, thence straight to the head of St. Mary's river, and thence along the middle of St. Mary's river to the Atlantic Ocean; and from thence to the mouth or inlet of Savannah river, the place of beginning. Including and comprehending all the lands and waters within the said limits, boundaries, and jurisdictional rights, and also all the islands within twenty leagues of the sea coast. And this convention do further declare and assert, that all the territory without the present temporary line and within the limits aforesaid, is now of right the

154 property of the free citizens of this State, and held by them in sovereignty, inalienable but by their consent. Provided nevertheless, that nothing herein contained shall be construed so as to prevent a sale to, or contract with the United States, by the legislature of this State, of and for all or any part of the western territory of this State, laying westward of the river Chatahoochee, on such terms as may be beneficial to both parties; and may procure an extension or settlement, and an extinguishment of Indian claims in and to the vacant territory of this State, to the east and north of the said river Chatahoochee, to which territory such power of contract or sale, by the legislature, shall not extend: And provided also, the legislature may give its consent to the establishment of one or more governments westward thereof; but monopolies of land by individuals being contrary to the spirit of our free government, no sale of territory of this State, or any part thereof, shall take place to individuals or private companies unless a county or counties shall have been first laid off, including such territory, and the Indian rights shall have been extinguished thereto. (Article 1, Constitution of the State of Georgia, as amended.)

(Prince's Digest. Laws of Georgia to 1837.)

Part First.

Boundaries and Divisions of the State.

I. Territory of the State.

The sovereignty and jurisdiction of this State, extends to all places within its bounds, which are hereby declared to be as follows:

155

Survey 1735.

Survey 1737.

Survey 1764.

Survey 1772
ex rel. Gov.
Swain, I, 409.

A. A. 1815 I,
422.

Beginning at a point on the sea shore, near the mouth of Little River, thence in a North-West direction, sixty-four and one-half miles, to a point two miles North-West of one of the branches of Little Pee Dee River; thence, in the same direction, twenty-two miles, to a stake in a meadow; thence in a direction due West, a distance of Sixty-two miles, to a point where the said line intersects the Charleston road, near the Waxhaw Creek; thence along the line extended from this point, in the year 1772, under the authority of Governor Tryon of North Carolina, to the Tryon Mountain; thence along the line run by the Commissioners of North Carolina and South Carolina, in the year 1815, that is to say: Beginning at a stone set up at the termination of the line of 1772, and marked S. C. and N. C., September 15th, 1815, running thence West, four miles and ninety poles to a stone marked S. C. and N. C.; thence South twenty-five degrees West, one hundred and eighteen poles to the top of the Ridge dividing the waters of the North Fork of Saluda River from the waters of the North Fork of Saluda River, thence along the various courses of the said Ridge, (agreeably to the Plat and Survey of the Commissioners and Surveyors, accompanying their report, dated 2d November, 1815,) to the Ridge that divides the Saluda waters from those of Green River; thence along the various courses of the said Ridge, agreeably to the said Plat and Survey, to a stone set up where the said Ridge joins the Ridge which divides the Eastern from the Western waters, and which stone is marked S. C. and N. C., September 28th, A. D., 1815; thence along the various courses of the said Ridge, agreeably to the said Plat and Survey, to a stone set up on that part of it, which is intersected by the Cherokee boundary line, run in the year 1797, and which stone is marked S. C. and N. C., 1813; and from the said last mentioned stone, on the top of the said Ridge, at the point of intersection aforesaid, a direct line, South sixty-eight and one-fourth West, twenty miles and eleven poles, to the thirty-fifth degree of North latitude, at the rock in the East bank of Chatooga River, marked latitude thirty-five degrees, A. D., 1813; which line, from the termination of the line of 1772 to the Chatooga River, is in all a distance of twenty-four miles and one hundred and eighty-nine poles.

From the State of Georgia, South Carolina is divided by the Savannah River, from its entrance into the Ocean to the confluence of the Tugaloo and Keowee Rivers; thence by the Tugaloo River to the confluence of the Tugaloo and Chatooga Rivers; thence by the Chatooga River to the North Carolina line aforesaid, in the thirty-fifth degree of North latitude; the line being low-water mark at the Southern shore of the most Northern stream of said Rivers, where the middle of the River is broken by islands; and the middle thread of the stream, where the Rivers flow in one stream or volume.

Charter of Ga. and Gov. Reynold's Com. in same terms. Watkins' Digest, 737. Convention at Beaufort, 1787. Schultz vs. Bank, U. S. C. Ct. 1822.

On the East the State is bounded by the Atlantic Ocean, from the mouth of the Savannah River, to the Northern boundary near the mouth of Little River, including all the islands.

International rights of the conterminous States over the Savannah River, as propounded by South Carolina.

Any charter or franchise granted, or to be granted by the State of Georgia, for the purpose of building and establishing Bridges or Ferries over the Savannah River, shall have full effect within the limits and jurisdiction of the State of South Carolina, to the same extent, in all respects, as if such charter or franchise had been granted by the State of South Carolina: Provided, That the State of Georgia, do, by law, provide that equal effect be given in the State of Georgia to charters and franchises granted by this State; and that the legal validity and effect of a charter granted by either of the said States for the purposes aforesaid, shall be subject to this limitation and restriction; that no such charter from either State shall prevent the other State from granting a Charter for a Bridge or Ferry over the Savannah River, at any place however near the place where a Bridge or Ferry is or may be established under a charter from the other State.

This certifies that the foregoing is a true copy of Statute appearing on pages 1, 2 and 3, inclusive, of Code of the Statute Law of South Carolina, prepared and submitted pursuant to Act of the General Assembly, 1859, (XII. page, 762) by J. L. Petigru, Commissioner of the Code and printed and adopted in 1861. The annotations indicated herewith appear in the margins of the original text.

[SEAL.]

W. BANKS DOVE, [SEAL.]
Secretary of State of South Carolina.

This 14, October, 1920.

The respondent also offers in evidence and requests the Court to take judicial cognizance of the boundary of the State of Georgia as set out in Sections 15, 16 and 17, of Article 1, Chapter 1, Part 1, Georgia Code of Laws of 1867.

158 The respondent also offers in evidence typewritten copy of Journals of Congress, reciting in detail what transpired on

Thursday, August 9, 1787, relative to a motion made by the delegates of South Carolina pertaining to the Beaufort Convention and reciting the ratification of the action of the said Convention by said Congress.

158a

Monday, Aug. 6, 1787.

Five States only attending, namely Massachusetts, New York, Pennsylvania, Delaware and Virginia and from Rhode Island. M. Varnum, the president, adjourned Congress until tomorrow, 11 o'clock.

Tuesday, Aug. 7, 1787.

Five States attended as yesterday and from Rhode Island M. Varnum and from South Carolina M. Kean.

Wednesday, Aug. 8th, 1787.

Six States attended, namely Massachusetts, New York, New Jersey, Pennsylvania, Delaware and Virginia and from Rhode Island M. Varnum and from South Carolina M. Kean.

Thursday, August 9, 1787.

Congress assembled, present Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia and South Carolina and from Rhode Island M. Varnum.

The delegates of South Carolina having laid before Congress an act of the legislature of that state empowering the delegates thereof to cede to the United States the claim of the said state to a certain tract of Western territory and the said delegates having presented to Congress a draught of a deed which they were ready to sign in compliance with the said act provided Congress are willing to accept the said cession.

EXHIBIT No. 6.

Resolved that Congress are ready to accept the cession of the claim of the State of South Carolina to the tract of Country
158b described in the Act of the said State whenever the delegates will execute a deed conformable to the said Act.

On application from the hon.^{ble} N. Gorham stating that he has a Schooner at Boston called "The Mathias," William Cowell, Master, bound for Mogadore in Morocco & praying for a sea letter for the said Schooner.

Ordered that sea letters in the usual form be granted for the Schooner the Mathias, William Cowell, Master.

A motion having been made by the delegate of South Carolina That the convention held and concluded between the commission of the State of South Carolina and Georgia at Beaufort in the State of South Carolina on the 28th day of April in the year of Our Lord 1787 in the words following to-wit "Convention between the State of South Carolina and Georgia concluded at Beaufort in the State of South Carolina on the twenty-eighth day of April in the

year of our Lord one thousand seven hundred eighty-seven and in the eleventh year of the Independence of the United States of America To all to whom these presents shall come the un-written Charles Cotesworth Pinckney Andrew Pickens and Pierce Butler esquires commissioners appointed by the State of South Carolina of the one part and the underwritten John Habersham and Lachlan McIntosh Esquires a majority of the commissioners appointed by the State of Georgia of the other part Send Greeting Whereas the State of South Carolina did heretofore present a petition to the United States in Congress Assembled and did therein set forth that a dispute and difference had arisen and subsisted between the States of South Carolina and Georgia concerning boundaries: the said

158c States claiming respectively the same territories, and that the case and claim of the State of South Carolina was as follows, that is to say, "Charles the Second, King of Great Britain, by charter dated the twenty-fourth day of March in the fifteenth year of the reign granted to eight persons therein named, as lords proprietors thereof all the lands lying and being within his dominions of America between thirty one and thirty six degrees of North Latitude in a direct west line of the South Seas, stiling the lands so described the province of Carolina. That on the thirtieth day of June in the seventeenth year of his reign the said King granted to the said Lords Proprietors a second charter enlarging the bounds of Carolina, viz—from twenty-nine degrees of North Latitude to thirty-six degrees thirty minutes, and from those points on the sea coast and West in a direct line to the South Seas. That seven of the said proprietors of Carolina sold and surrendered to George the second late King of Great Britain, all their title and interest in the said province, and the share of the remaining proprietors was seperated from the King's and allotted to him in the north part of North Carolina. That Carolina was afterwards divided into two provinces called North and South Carolina. That by a charter dated the ninth day of June one thousand seven hundred and thirty-two, George the Second King of Great Britain granted to certain persons therein named all the lands lying between the rivers Savannah, Alatomaha and between lines to be drawn from the heads of these rivers respectively to the South Sea and stiled the said Colony of Georgia. That by the treaty of peace concluded at Paris on the tenth day of February one thousand seven hundred and sixty-three, the river Mississippi was declared to be the western boundary of the north American Colonies, that the Governor of South Carolina in the year one thousand seven hundred and sixty-two, conceiving that the lands to the Southward of the Alatomaha still belonged to South Carolina granted several tracts of the said lands. That the Government of Georgia complained to the

158d King of Great Britain respecting those grants as being for lands within the limits, and thereupon his Majesty by proclamation dated the seventh day of October, one thousand seven hundred and sixty-three, annexed to Georgia all the lands lying between the rivers Alatomaha and St. Marg. the validity of the grants passed by the Governors of South Carolina as aforesaid, re-

maining, however, acknowledged and uncontested, and the grantees of the said land or their representatives still holding it as their legal estate. That South Carolina claims the lands lying between the North Carolina line, and the line run due west from the mouth of Ingoloo river to the Mississippi, because as the said State contends the river Savannah loses that name at the confluence of Ingoloo and the Keowee Rivers, consequently that spot is the head of Savannah river. The State of Georgia on the other hand contends that the source of Keowee river is to be considered as the head of Savannah River. That the State of South Carolina also claims all the lands lying between a line to be drawn from the head of the River St. Marg., the head of Alamamaha, the Mississippi and Florida, being as the said State contends within the limits of its charter, and not annexed to Georgia by the said proclamation of one thousand seven hundred and sixty-three. The State of Georgia on the other hand contends that the tract of country last mentioned is a part of that State. The State of South Carolina d'd therefore by their said petition pray for a hearing and determination of the differences and dispute subsisting as aforesaid between the said State and Georgia, agreeable to the Articles of confederation and perpetual Union between the United States of America. And whereas the State of Georgia were duly notified of the said Petition, and did by their lawful Agents appear in order to establish their right to the premises in the manner directed by the said Articles of confederation, and proceedings were thereon had in Congress in order to the appointment of Judges to constitute a court for hearing and determining the said matter in question. And whereas it appeared to be the sincere wish and desire of the said States of South Carolina and Georgia that all and singular the differences and claims subsisting between the said States relative to boundary should be amicably adjusted and compromised. And whereas the legislature of the State of South Carolina did elect the above named Charles Cotesworth Pinckney, Andrew Pickens and Pierce Butler, Esquires, Commissioners and did invest them, or a majority of them, with full and absolute power and authority in behalf of that State, to settle and compromise all and singular the differences, controversies, disputes and claims which subsist between the said State and the State of Georgia, relative to boundary and to establish and permanently fix a boundary between the two States. And the said State of South Carolina did declare that it would at all times thereafter ratify and confirm all and whatsoever the said commissioners or a majority of them should do in and touching the premises, and that the same should be forever binding on the said State of South Carolina. And whereas the Legislature of the State of Georgia did appoint John Houstoun, John Habersham and Lachlan McIntosh Esquires commissioners and did invest them with full and absolute power and authority in behalf of that State to settle and compromise all and singular the differences, controversies, disputes and claims, which subsist between the said State and the State of South Carolina relative to boundary and to establish and permanently fix a boundary between the two States. And the said State of Georgia did also

declare that it would at all times thereafter ratify and confirm all and whatsoever the said last mentioned commissioners or a majority of them should do in and touching the premises, and that the same should be forever binding on the said State of Georgia. Now therefore know Ye that the underwritten commissioners on the part of the State of South Carolina and Georgia respectively having by mutual consent assembled at the town of Beaufort in the State of South Carolina, on the twenty-fourth day of this present month of April in order to the due execution of their respective trusts, and having reciprocally exchanged and considered their full powers, and declared the same legal and forever binding on both States, and having conferred together on the most effectual means of adjusting the differences subsisting between the two States and of establishing and permanently fixing a boundary between them, have agreed and by these presents for and in behalf of their respective States do mutually agree to the following details, that is to say. Article the first. The most northern branch of stream of the River Savannah from the Sea or mouth of such stream to the fork or confluence of the rivers now called Ingoloo and Keowee, and from thence to most northern branch or stream of the said River Tugaloo till it intersects the northern boundary line of South Carolina, if the said branch or stream of Ingoloo extends so far north, reserving all the islands in the said rivers Savannah and Tugaloo to Georgia, but if the head spring or source of any branch or stream of the said River

Tugaloo does not extend to the north boundary line of South 158g Carolina, then a west line to the Mississippi to be drawn from the head spring or source of the said branch or stream of Ingoloo river which extends to the highest northern latitude shall forever hereafter form the separation limit and boundary between the States of South Carolina and Georgia. Article the second. The navigation of the river Savannah at and from the bar and mouth along the northeast side of Cockspur Island and up the direct course of the main northern channel along the northern side of Hutchinsons Island opposite the town of Savannah to the upper end of the said Island, and from thence up the bed or principal stream of the said River to the confluence of the Rivers Tugaloo and Keowee and from the confluence up the channel of the most northern stream of Tugaloo river to its source, and back again by the same channel to the Atlantic Ocean, is hereby declared to be henceforth equally free to the citizens of both States and exempt from all duties, tolls, hindrance, interruption or molestation whatsoever attempted to be enforced by one State on the citizens of the other, and all the rest of the river Savannah to the Southward of the foregoing description is acknowledged to be the exclusive right of the State of Georgia. Article the third. The State of South Carolina shall not hereafter claim any lands to the eastward, southward, southeastward or west of the boundary above established, but hereby relinquishes and cedes to the State of Georgia all the right, title and claim which the said State of South Carolina hath to the government, sovereignty and jurisdiction in and over the same and also the right of presumption of the soil from the native Indian and all other the estate, property and claim which the State of

South Carolina hath in or to the said land. Article the Fourth. The State of Georgia shall not hereafter claim any lands to the northward or northeastward of the boundary above established, but hereby relinquishes and cedes to the State of South Carolina 158*h* all the right title and claim which the said State of Georgia hath to the government sovereignty and jurisdiction in and over the same and also the right of preemption of the soil from the native Indians and all other the estate property and claim which the State of Georgia hath in or to the said lands. Article the Fifth. The lands heretofore granted by either of the said States between the forks of Tugaloo and Keowee shall be the private property of the first grantees and their respective heirs and assigns and the grantees of any of the said lands under the State of Georgia shall within twelve months from the date hereof cause such grants or authentic copies thereof ratified under the seal of the State of Georgia to be posted in the Office of the Secretary of State of South Carolina, to the end that the same shall have been so recorded, the grantees shall be entitled to receive again from the said Secretary their respective grants of the copies thereof, whichsoever may have been so deposited without any charge or fee of office whatsoever and every grant which shall not, or of which the copy certified as above mentioned shall not be so deposited shall be adjudged void. Article the Sixth. The commissioners on the part of the State of South Carolina do not by any of the above articles mean to cede, relinquish or weaken the right title and claim of any of the individual citizens of the State of South Carolina to any lands situated in Georgia, particularly to the lands situated to the south or southwest of the river Altamaha and granted during the administration

of Governor Boone in the year one thousand 1787, August 9. seven hundred and sixty-three and they do hereby declare that the right and title of the citizens to the same is and ought to remain as full, strong and effectual as if this convention had not been made. The Commissioners on the part of the State of Georgia do decline entering into any negotiation relative to the lands mentioned in this article as 158*i* they conceive they are not authorized so to do by the powers delegated to them. In testimony whereof the said Charles Cotesworth Pinckney, Andrew Pickens and Pierce Butler for and in behalf of the State of South Carolina and the said John Habersham and Lachlan McIntosh for and in behalf of the State of Georgia have to these presents and a duplicate thereof both indented interchangeably set their hands and affix their seals. Done at Beaufort in the State of South Carolina the twenty-eighth day of April in the year of our Lord one thousand seven hundred and eighty-seven and in the eleventh year of the Independence of the United States of America.

(Signed)

CHARLES COTESWORTH	
PINCKNEY.	[L. S.]
ANDREW PICKENS.	[L. S.]
P. BUTLER.	[L. S.]
JOHN HABERSHAM.	[L. S.]
LACHLAN MCINTOSH.	[L. S.]

be ratified and confirmed and that the lines and limits therein specified shall be hereafter taken and received as the boundaries between the said States of South Carolina and Georgia forever.

A motion was made by M. Dane seconded by M. Holten that the foregoing motion be committed; and on the question for commitment, the yeas and nays being required by M. Kean.

Massachusetts	M. Holten	ay)	ay
	M. Dane	ay)	
New York	M. Haring	ay)	ay
	M. Yates	ay)	
New Jersey	M. Clarke	ay)	ay
	M. Schurman	ay)	
Pennsylvania	M. St. Clair	ay)	ay
	M. Irwine	ay)	
Delaware	M. Kearny	ay)	ay
	M. Mitchell	ay)	
Virginia	M. Grayson	ay)	
	M. Lee	ay)	ay
South Carolina	M. Carrington	ay)	
	M. Kean	ay)	ay
	M. Huger	ay)	

158j So it was resolved in the affirmative.

In virtue of the powers in them vested the Delegates of the State of South Carolina for and in behalf of the said State executed the following deed of session to the United States of America:

To all who shall see these presents, we, John Kean and Daniel Huger, the underwritten Delegates for the State of South Carolina in the Congress of the United States, send Greeting:

Whereas the General Assembly of the State of South Carolina on the eighth day of March in the * * *

159 *Boundary 1, South Carolina.*

An Act for the Ratification of Certain Agreements Made and Entered Into by Commissioners Appointed by the Legislatures of Georgia and Carolina for the Purpose of Settling Certain Disputes Relative to Boundary.

Approved February 1, 1788, Vol. 1, 337.

Whereas, by an ordinance passed by the legislature of this State, commissioners were appointed and authorized to meet other commissioners, similarly appointed by the State of South Carolina; and whereas the said commissioners, or a majority of them from each State, were vested with full powers to settle all differences, controversies, disputes, and claims, which subsisted between the two States, relative to boundary: and whereas, they, conformably to those powers, did, on the 28th day of April, in the year 1787, in convention at Beaufort, in the State of South Carolina, by certain instruments of

writing to which the said commissioners interchangeably set their hands and affixed their seals, make mutual concessions and agreements for the purpose aforesaid:

Be it therefore enacted, &c. That whatever was done by the said commissioners, or a majority of them as aforesaid, is hereby ratified, and shall be considered as binding upon the citizens of this State, any law to the contrary notwithstanding.

Page 144, Prince's Digest, Laws of Georgia to 1837.

160 *Additional Instructions to Governor Johnson Relative to the Charter of Georgia.*

George R.

Additional Instruction to Our Trusty and Welbeloved Robert Johnson, Esq., Our Captain General and Governor in Chief in and Over Our Province of South Carolina, in America.

Given at Our Court, at Kensington, the Thirtieth Day of September, 1732, in the Sixth Year of Our Reign.

Whereas application hath been made to Us by the humble Petition of the Trustees for Establishing the Colony of Georgia in America, Setting forth that the Petition being incorporated by Our Royal Charter bearing date the ninth day of June last for Setting a regular Colony within the Bounds of Our Province of South Carolina they find it necessary for carrying on the said Service that Notice should be given of the said Charter to the Governor of Our said Province, with a Signification of Our Royal Pleasure that all due Countenance and Encouragement should be given for Settling the said Colony and therefore most humbly praying that We would be pleased to give such Instructions to the Governor of Our Said Province as may be proper upon this Occasion And likewise a Direction for registering the said Charter in the Records of Our said Province, from a Copy to be annexed to the said Instruction; We have been graciously pleased to Condescend to the Petitioner's request And have thought fit hereby to Will and require you to give all due Countenance and encouragement for the Settling of the said Colony of Georgia, by being aiding and assisting to such of Our Subjects as shall come into Our said Province of South Carolina for that purpose according to Our Gracious Intentions declared.

Declared in Our Royal Charter aforementioned a Copy whereof is hereunto annexed, Which We do hereby further require
161 you to cause to be forthwith registred and entered upon Record by the proper Officer in Our said Province of South Carolina.
G. R.

Mr. Wolfe: I desire also to offer in evidence the following list of citations:

(1) The decision In Re Shultz & Breithaupt, et al., v. The State Bank of Georgia, et al., (1822 Mss. Decision per Johnson, Judge U. S.

STATE OF NORTH CAROLINA

DEPARTMENT OF THE INTERIOR

THE GEOGRAPHICAL ATLAS

1882

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STATE OF NORTH CAROLINA

DEPARTMENT OF THE INTERIOR

THE GEOGRAPHICAL ATLAS

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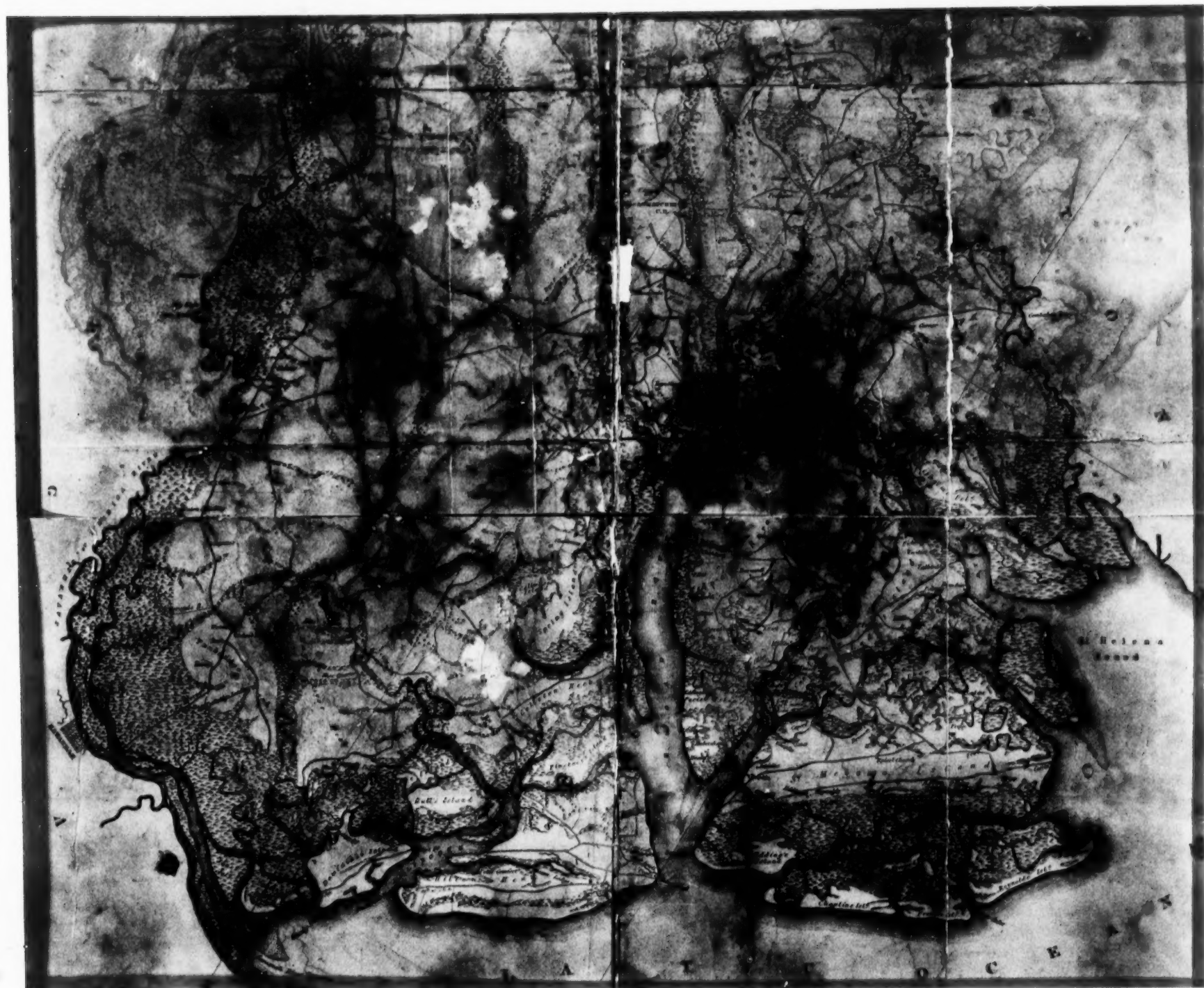
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Circuit Court,) a certified copy of which is offered in evidence. This decision was confirmed in the case of Jos. J. Kenedy, Trustee of Henry Shultz v. the Bank of the State of Georgia, reported in 8 How., at page 586; 12 L. ed. 1209.

(2) Fletcher v. Peck, 6 Cranch, U. S. Sup. Ct. Rep. page 86; 3 L. ed. 162.

(3) South Carolina v. Georgia, et al., 3 Otto U. S. Sup. Ct. Rep. 4. This decision does not discuss nor attempt to pass upon matters pertaining to the boundary lines, but merely upon those matters pertaining to the navigation of the three rivers forming the boundary line between the states and inferentially leaves the boundary lines as suggested and as fixed by the Treaty intact.

(4) Georgia Railway & Power Co. v. Wright, Comptroller General, et al., 146 Ga. St. Rep. 29, and cases therein cited, in which the contentions of the defendant as to the construction of the Beaufort Treaty are sustained.

See Simpson v. State, 92 Ga. 41; 17 S. E., 984; 22 L. R. A. 248; 44 Am. st. Rep. 75.

Also James v. State, 10 Ga. App. 13; 72 S. E., 600.

Mr. Denny: I object to the introduction of these decisions. The decisions of Courts of competent jurisdiction are at all times before the United States Supreme Court, and the use of them by either party litigant is purely a matter for briefs, and not for evidence."

162 Mr. Wolfe: I desire also to offer in evidence a photographic copy of the Map of Beaufort District (South Carolina) Mills Atlas, 1825.

(Here follows Map of Beaufort District, South Carolina, marked page 162a.)

Mr. Denny: I object to the introduction of this map.

This map offered in evidence is offered without proof as to its authenticity, correctness or reliability; no evidence is offered as to the capability of the persons who made the map, or as to its having been prepared upon surveys made by authorized individuals and recognized engineers; it is lacking in the stamp of Government preparation, and it is partisan in every particular; it was prepared by local parties of South Carolina, who, so far as developed, may be partisan and prejudiced in favor of the State of South Carolina—In short, the map is lacking in proof of preparation and reliability; it is purely in the nature of hearsay evidence and is inadmissible.

163 It is requested by counsel that this Honorable court take cognizance of any public records or documents of which such cognizance can be taken.

Respectfully submitted,

Chas. S. Douglas

Special Master.

FILED

DEC 28 1921

WM. R. STANSBURY

CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1921.

No. 28; Original.

THE STATE OF GEORGIA

Complainant;

vs.

THE STATE OF SOUTH CAROLINA

Respondent

BRIEF FOR THE COMPLAINANT.

GEO. M. NAPIER,

Attorney General;

SEWARD M. SMITH,

Assistant Attorney General;

THOS. F. GREEN,

Special Counsel.

Green & Michael,
Of Counsel.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1921.

No. 22, Original.

THE STATE OF GEORGIA
Complainant

vs.

THE STATE OF SOUTH CAROLINA
Respondent

BRIEF FOR THE COMPLAINANT.

This is a complaint brought by the State of Georgia against the State of South Carolina as an original cause of action in the Supreme Court of the United States, filed in this Court according to the well recognized procedure permitted in such cases.

Georgia, in her bill of complaint, paragraph two, shows that the legislative branch of the State passed a Resolution requiring the Governor of said State "To institute a suit or suits in the Supreme Court of the United States by and in the name of the State of Georgia, against the State of South Carolina, for establishing the claim and boundary of Georgia to and including

the entire bed of the Savannah and Tugalo Rivers in their entire lengths, islands and all, clear over to the South Carolina shore at the ordinary mean-water level of said Rivers, and to prosecute for and recover the same wherever any adverse occupancy does or may exist."

In accordance with this Resolution of the legislature, the above suit was duly filed and service perfected. It might not be amiss here to state that this suit was not brought merely to again agitate the old boundary dispute between the two States, but was brought because an intensely practical question had arisen which involved the boundary between the two States, and which question demanded a settlement not only to definitely determine a present controversy, but for the purpose of preventing similar controversies in the future.

The Georgia Railway & Power Company, a corporation of the State of Georgia, had erected a large dam across the Savannah River and anchored it to an Island near the South Carolina shore. The dam, with its machinery, was quite valuable, and was used for the development of hydro-electrical power. The State of Georgia claimed that this property was within the State, and subject to taxation. The corporation replied that the dividing line between the State of Georgia and South Carolina was the middle of the stream and that a good portion of the dam, with its machinery, was beyond the middle of the river, within the jurisdiction of the State of South Carolina, and, therefore, not subject to taxation in the State of Georgia. Litigation arose as a result of these respective claims, which will be later referred to in the brief, and the legislative branch of the Government then requested the bringing of this suit in order that the boundary be-

tween the two States might be accurately determined in reference to this dispute and similar disputes which might arise in the future.

As is well known, a dispute as to the boundary between these two States is a very old one, and though the well-known Convention of Beaufort was held in April, 1787, in order to settle this question, there has remained a distinct impression in the State of Georgia that this Convention did not definitely settle this question and much discussion has been engaged in between the two States as to this boundary, particularly in the years 1852 and 1853.

Some very reputable authority could be cited in the State of Georgia going to show that the line was not the true line as originally existed between these two States. For instance, one of the old Digests of the States, known as Schley's Digest, contains what purports to be an exact reproduction of the original charter of the Province of Georgia, and on pages 435 and 436 of this Digest there purports to be an accurate description of the territory which was allotted to the Province of Georgia, and in this description we find these words: "Of all those lands, country, and territories situate, lying and being in that part of South Carolina, in America, which lies from the *most northern part of a stream or river*, there commonly called the Savannah."

Governor Cobb, in the year 1852, made quite an argument as to the boundary between the two States, basing his argument largely on the original wording of the charter, which he claimed was correctly printed in Schley's Digest. Governor Cobb's argument was to the effect that as the Province of Georgia extended from

the *most northern part* of a stream or river known as the Savannah, that this fixed the Northern or Eastern embankment of the River as the dividing line between the two States, and that, therefore, the State of Georgia owned the entire bed of the Savannah River.

As the legislature authorized and directed the bringing of such a suit, the Governor of the State of Georgia directed counsel to file the suit accordingly, and hence the suit was brought as appears in the record from pages 4 through 9.

It might be interesting to here note that there seemed to be nowhere in either South Carolina or Georgia, or elsewhere in America, so far as counsel could ascertain, an authenticated copy of the original charter, or letters patent, to the Province of Georgia, and though this controversy in reference to the boundary had been raging for over a century, no one seemingly had made an effort to procure such a copy. Counsel for the State of Georgia communicated with the proper authorities in England and have received a properly authenticated copy of the original charter, from the Patent Roll (Chancery), London, England, which charter appears on pages 29 through 42 of the record. A reading of this charter will show that Schley's purported copy of the Charter is not correct, and that the correct language is: "Of all those lands, countries, and territories, situate, lying and being in that part of South Carolina, in America, which lies from the *most northern stream of a river there commonly called the Savannah,*" etc.

In other words, the disputed words are "*the most northern part of a stream or river.*"

Counsel, by further investigation in England, satis-

fied themselves that this was the correct language of the original charter and hence this disputed point is now settled.

Again, although the suit as originally filed in this Court was based on what was thought to be the wording of the original charter and took no notice of the Convention of Beaufort, after careful investigation counsel for the State of Georgia must admit that this pact between the two States, ratified by both States by legislative enactments, and accepted by the Congress of the United States, was an agreement between the two States as to the boundary and must be recognized as such. Counsel, therefore, do not now insist that the State of Georgia can successfully claim the entire bed of the river, but they do claim that the Treaty of Beaufort, as it is commonly known, must be interpreted and directly applied to the practical question in controversy which has arisen in the past and which will doubtless arise in the future.

This difference in the verbiage impels counsel for the State of Georgia to modify their contentions as to the exact boundaries, so far as the *waters* of the stream is concerned; and, in all sincerity and in frankness with this Honorable Court, said counsel recede from the claim to the *entire waters* of the Savannah and its tributaries along the boundary between the States of Georgia and South Carolina, and do and shall contend only for the boundary described and made effective by the terms found actually expressed in said original grant, which are as follows: to-wit: "to the most northern stream of the river called the Savannah, etc."

Both the contention of Plaintiff's petition and the ad-

missions contained in defendant's answer show that, without controversy, all the islands in the rivers Savannah and Tugaloo are the right and property of the State of Georgia.

As will be set forth at some length in the brief, counsel now insist, in accordance with the original charter given to the State of Georgia, and in accordance with the boundary determined at the Convention of Beaufort, that the true line between the two States is midway between the two embankments of the Savannah River where this River is not broken by Islands, and, where it is broken by Islands, this line deflects and follows midway the most northern stream of this river between a given island and the South Carolina shore; this line being drawn in this manner up the Savannah, the Tugaloo and the Chattooga Rivers until the Chattooga River intersects the northern boundary of South Carolina at the 35th line of North latitude.

Various historical records have been introduced and are in the record, all of which documents are well known to the Court, and of which judicial cognizance would have been taken. At this late day, and in this practical age, these documents are only necessary to elucidate a few points in this discussion, and counsel will briefly refer to these documents in the brief of law.

BRIEF OF LAW AND ARGUMENT.

1.

The State of Georgia first submits that where two independent States are separated by a navigable stream, each State holds to the middle of the stream. This principle is so ancient, and of such universal application, that it scarcely needs a citation of authority, but the Supreme Court of the United States, in its early history, adopted this rule in the following language:—

“Where a river is the boundary between two nations or States, if the original property is in neither and there be no convention respecting it, each holds to the middle of the stream.”

Handy vs. Anthony, 5 Wheaton, 374; 5 Law Ed., 113.

This rule, so far as counsel are informed, has never been criticized or questioned, except as to whether the line should be the *filum aquae*, a point midway between the two great embankments of the stream, or whether it should be the middle of the main navigable channel of the stream without regard to the embankments of the entire river. This question has been raised for the reason that the courts have said in some cases that the main navigable channel of a stream might be near the shore of one State and far removed from the other, and in such a case it would not be fair to take the *filum aquae* as the dividing line, and thereby deprive one State of the navigation of the river and that in such a case the fairer rule would be to make the dividing line the middle of the main channel so that each State would have the right of navigation, rather than the middle of the stream as measured from bank to bank.

It is needless to pursue this inquiry further, for the Convention of Beaufort undertook to settle both the question of boundary and of navigation. Article 1 deals directly with boundary; Article 2 with navigation, and since independently of the question of boundary the right of navigation and the line of navigation are distinctly set forth as to both States, the ancient rule would apply and a line midway between the two shores would be the boundary line unless changed by the Convention.

II.

Next, before proceeding to a discussion of how far this well established rule as to boundary may have been modified by the Convention held at Beaufort, the State of Georgia desires to submit that this rule is controlling in this case unless qualified by said Convention, and is not affected by that other rule, which is as follows:—

“When one State is the original proprietor and grants the territory on one side only of a river, it retains the river within its own domain and the newly created State extends to the river only.”

Counsel for the State of South Carolina refer to this rule in their brief, and rather seem to invoke the rule, although other portions of their brief do not seem to insist on it. Counsel for the State of Georgia respectfully insist that this rule, though recognized, is not applicable to this controversy for two reasons:

First: Whereas, it is historically true, as is well known, and as is shown by the documents compiled in the record, that the Province of South Carolina originally embraced the Province of Georgia, yet it is as well known that there has been a discussion as to whether or

not the original letters patent to South Carolina established a Proprietary Grant or a Royal Grant. Counsel for the State of Georgia are of the opinion that this original grant was a Royal Grant under which the King reserved full authority to re-grant, at his pleasure, portions of the original territory. However, it is needless to pursue this question, for the very good reason that the original Province of South Carolina was divided into the Provinces of North Carolina and South Carolina, and one of the original eight proprietors took North Carolina and the seven remaining proprietors received the Province of South Carolina. Later, in 1729, these seven Lords Proprietors distinctly surrendered their title and interest in the Province of South Carolina to His Majesty, the King, as is positively shown by "an Act for establishing an agreement with the seven Lords Proprietors of Carolina for the surrender of their title and interests in that Province to His Majesty," which act is found in the record on pages 70 through 83, and which Act was placed in the record by the State of South Carolina herself.

Then there will be found in the record the original Charter of June 9, 1732, granted by King George II, to certain parties establishing the Province of Georgia, which Charter appears in the record on pages 29 through 42. These documents clearly establish that though the territory of Georgia was at one time included within the territory of South Carolina, the Lords Proprietors surrendered this territory to the Crown and the Province of Georgia received its Charter directly from His Majesty, King George II. This unquestionably eliminates the rule above announced from this discussion.

Second: The Treaty of Beaufort takes up this question somewhat as an original question recognizing, of course, the respective Charters of the States in a measure, and then absolutely establishes the boundary between the two States except as therein qualified.

III.

Counsel for the State of Georgia have now reached a discussion of the Treaty of Beaufort and it simply remains to apply this pact, in a practical way, to the situation as it exists in the Savannah and other rivers. Article first of this Treaty is as follows:—

“The most northerly branch or stream of the River Savannah, from the sea, or mouth, of such stream to the fork or confluence of the rivers now called Tugaloo and Keowee; and from thence, the most northern branch or stream of the said River Tugaloo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugaloo extends so far north, reserving all the islands in the said Rivers Savannah and Tugaloo to Georgia; but if the head spring or source of any branch or stream of the said River Tugaloo does not extend to the northern boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the headspring or source of the said branch or stream of Tugaloo, which extends to the highest northern latitude, shall forever hereafter form the separation, limits and boundary between the States of South Carolina and Georgia.”

At the time of this Convention it was not known

whether the northern branch of the River Tugaloo extended to the northern boundary line of South Carolina or not, but that fact is now well established and not questioned by South Carolina. It is well known now that the Chattooga River is the northern branch of the Tugaloo and does intersect the northern boundary line of South Carolina at the thirty-fifth degree of North Latitude. Making the necessary changes, the boundary as established by this Convention is beyond all question as follows: The most northern branch or stream of the River Savannah from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugaloo and Seneca, and from thence the most northern branch or stream of the River Tugaloo until it intersects with the Chattooga; thence along this river, the Chattooga, till it intersects the northern boundary line of South Carolina, reserving all the islands in the said Rivers Savannah, Tugaloo and Chattooga to Georgia.

Counsel repeat that by making the necessary changes, as well recognized, this is the exact boundary as established by the Convention of Beaufort. This is the exact boundary for which Georgia is contending today, and she simply desires that this Honorable Court, in a definite way, make an application of this boundary to these rivers as they flow to the sea.

IV.

Counsel further insist that South Carolina herself, with one modification, recognizes this as the true boundary line today.

Code of Laws of South Carolina, 1912, Vol. 1, Section 1, as appears on page 42 of the record is as follows:—

"From the State of Georgia, South Carolina is divided by the Savannah River, from its entrance into the ocean to the confluence of the Tugaloo and Seneca Rivers; thence by the Tugaloo River to the confluence of the Tugaloo and Chattooga Rivers; thence by the Chattooga River to the North Carolina line aforesaid, in the thirty-fifth degree of North latitude, the line being low-water mark at the southern shore of the most northern stream of said rivers where the middle of the river is broken by islands, and middle thread of the stream where the river flows in one stream or volume. Also see Revised Statutes of 1893, Sec. 1."

The Court's attention is specially called to these words: "The line being low-water mark at the southern shore of the most northern stream of said rivers, where the middle of the river is broken by islands, and middle thread of the stream where the river flows in one stream or volume." This section of the Code of South Carolina clearly established the middle thread of the river measured from bank to bank as the dividing line between the two States, where the river is not broken by islands, and where the river is broken by islands the Code admits that the northern channel is the boundary line, but instead of following the middle of this channel, South Carolina claims to the southern shore of the most northern stream, which, of course, is the stream running around the island between the island and the South Carolina shore. This is the crux of the entire matter, and this is the point which the State of Georgia submits to this Court for decision. The State of Georgia insists that this last line,

instead of being the southern shore of the most northern stream, should be the middle of this stream, as measured from the northern or eastern shore of the island to the southern or western shore of South Carolina. The State of Georgia earnestly contends that this is the only fair, sensible interpretation of the Treaty of Beaufort, and such an interpretation would result in a direct application of that ancient rule of boundary which is invoked in the first section of this brief.

In accordance with this principle is the admission contained in Defendant's answer (*See paragraph 25 of the report, at page 16*):

"That the boundary line between the State of Georgia and the State of South Carolina has accordingly been from said date of the ratification of the Beaufort Convention recognized and acquiesced in by the State of South Carolina and the State of Georgia as follows: From the most northern stream or branch of the river known as the Savannah at its entrance into the ocean to the confluence of the Tugaloo and Seneca (formerly Keowee), reserving all the islands in the said Rivers Tugaloo and Savannah River to Georgia, and from the confluence of said Tugaloo and Seneca Rivers up the most northern branch or stream of the said Tugaloo River, namely, the Chattooga River, to the North Carolina line on the 35th degree of North latitude, the line being low-water mark at the southern shore of the most northern stream of said rivers where the middle of the river is broken by islands, and the middle thread of the stream where the river flows in one stream or volume."

Note that Defendant claims, however, to the *northern shore* of the islands. This would give South Carolina all of the water next to her mainland. The authorities uniformly fix the boundary at *medium filum* between that mainland and the island owned by another party.

It is clear that all the islands are given to Georgia under the Treaty of Beaufort. It is likewise clear that the Commissioners at this Convention made a direct application of that established rule as to boundaries, to-wit: the middle of the stream, and it is equally clear that where the river is broken by islands the measurement should be made from the middle thread of the branch or stream between the South Carolina shore and island, and not from the mainland of the Georgia shore to the South Carolina shore.

The Court can see in an instant what an absurd situation would arise if this latter measurement were adopted. In a given case, if an island were far beyond the thread of the stream near the South Carolina shore, and the measurement was made from the Georgia mainland to the South Carolina shore, Georgia would extend to the middle of the stream, and then you would have South Carolina territory, and then an island, Georgia territory, and then again South Carolina territory. Such a construction of the Treaty would grant to Georgia insular possessions in the Savannah River, and Georgia officers would have to go through South Carolina territory to serve process or to enforce the laws of Georgia. The Commissioners at Beaufort, counsel respectfully submit, did not intend to create any such absurd and anomolous situation, but their intention clearly was to give the intervening territory to Georgia and then take the north-

ern branch of the stream and make the dividing line between a given island, which is Georgia territory, and South Carolina, midway of this northern branch. In fact this is nothing but a clear interpretation and application of the exact language of the Treaty, for it says in express language, "that the most northern branch or stream of the River Savannah from the sea or mouth of such stream," etc., should be followed, and the stream which flows between an island and the South Carolina shore is certainly the most northern stream or branch of the river.

The provision as to navigation, as distinguished from the boundary, supports our contentions. The second article of the Convention of Beaufort provides:—

"The navigation of the River Savannah at and from the bar and mouth along the northeast side of Cockspur Island and up the direct course of the main channel along the northern side of Hutchinson's Island and from thence up the bed or principal stream of the said river to the confluence of the Rivers Tugaloo and Keowee, and from the confluence up the channel of the most northern stream of the Tugaloo River to its source and back again by the same channel to the Atlantic Ocean, is declared to be henceforth equally free to the citizens of both States, and free from duties, tolls, hindrances, interruptions, etc., attempted to be enforced by one State on the citizens of the others, and all the rest of the River Savannah to the southward of the foregoing description is acknowledged to be the exclusive right of the State of Georgia."

So we observe that the boundary line is the most northern branch or stream of said river; but so run as that it

will reserve all of the islands in the River to Georgia; *but the line of navigation is the principal stream of said river.* Obviously, if the intention had been that the right of navigation shall follow the boundary of the State, there would have been no necessity for this second article treating the boundary line as one thing and the channel of navigation as another thing. It would have been easy to say, if such had been the intention, that the right of navigation along said boundary shall be open and free. But the framers of the Treaty of Beaufort knew that the channel would run sometimes on one side of the boundary line and sometimes on the other, and, therefore, it was necessary to draw two sections, one defining the route or channel of navigation and the other defining the boundary, which would sometimes run along a stream of the river too small or shallow for navigation; and so the framers of that Treaty met the difficulty by inserting the two separate articles in the Treaty to cover the problem in each of these respects separately. In the one case when dealing with the question of navigation the language is "along the bed or principal stream" of the river "and back again by the same channel." But when dealing with the boundary, the language is "the most northern branch or stream of said river."

Counsel for South Carolina, however, submit that Georgia has adopted some other boundary than the one for which contention is now made. Such a contention cannot be sustained. It is true Georgia cannot claim the entire river beds of the respective rivers, and such a claim is not now made. A portion of section sixteen (16) of the Code of Georgia of 1910, which is the last codification of Georgia laws, is as follows:—

"From the sea, or mouth, of the River Savannah, along the stream thereof to the fork or confluence made by the Rivers Keowee and Tugaloo, and thence along said River Tugaloo until the fork or confluence made by the said River Tugaloo and the river Chattooga, and up and along the same to the point where it touches the northern boundary line of South Carolina and the southern boundary line of North Carolina, which is at a point on the thirty-fifth parallel of north latitude, reserving all the islands in said Rivers Savannah, Tugaloo and Chattooga to Georgia."

Section seventeen (17) is as follows:—

"The boundary between Georgia and South Carolina shall be the line described as running from the mouth of the River Savannah, up said river, and the Rivers Tugaloo and Chattooga, to the point where the last named river intersects with the thirty-fifth parallel of north latitude, conforming as much as possible to the line agreed on by the Commissioners of said State at Beaufort on the 28th day of April, 1787."

These Code sections are in the language of previous Codes and Constitutions of the State of Georgia.

It is noticeable that, whereas the Convention of Beaufort and the Codes and Constitutions of Georgia establish a boundary, these authorities do not establish an exact boundary *line*. However, it is equally clear that an application of that well established rule, heretofore adverted to, will and does establish such a *line*, and it is *the line* now contended for by Georgia.

Counsel for the State of South Carolina cite the two Georgia cases of: —

Simpson vs. The State, 92 Ga. 41.

James vs. The State, 10 Ga. Appeals, 13.

These cases do not militate in the slightest against the position which is now being taken, but simply hold that the Treaty of Beaufort established the boundary between these two States, and that the middle of the stream is the boundary line, but the question as to how the middle of the most northern branch of that stream is to be determined when the stream is broken by an island, is not involved in either case and in fact has never been involved in any case in Georgia, except as it may be involved in the case of the Georgia Railway & Power Company vs. Wright, to which case we will later call special attention.

A casual investigation of the Constitutions, Codes and decisions of Georgia will show that there is nothing in any of them to act as an estoppel or res adjudicata against the State so far as its present contentions are concerned.

VI.

Permit counsel for the State of Georgia to again suggest that, whereas, the boundary between the two States has been established and accepted by the States, this established boundary fails to indicate in exact terms an accurate *line* of separation between the two commonwealths.

It is in this special section of this brief that counsel wish to discuss with the Court this point in the case.

The point, though not decided in its entirety, has been practically decided by the Supreme Court of Georgia as follows:

"The general rule is that where a river is the boundary between two States, if the original property is in neither, and there be no convention respecting it, each State holds to the middle of the stream. The Beaufort Convention of 1787 settled the boundary line between the States of South Carolina and Georgia, which, according to that convention, is the most northern branch or stream of the River Savannah from the sea to the confluence of the Seneca and Tugaloo Rivers, etc., reserving all the islands in the rivers to Georgia. That part of the Savannah River which is broken by islands located between an island and the mainland, is within the jurisdiction and sovereignty of the State of Georgia, and a dam constructed across the river from an Island to the Georgia shore is subject to taxation in Georgia."

Georgia Railway & Power Company vs. Wright, Comptroller General, et al., 146th Ga., 29.

The above decision is remarkably clear and we desire to submit the following quotation from said decision:—

"The Savannah River is navigable a considerable distance from its mouth, and many islands are located within its waters. Its general direction is northwest or southeast. We recognize the general rule to be that when a river is in the boundary between two States, if the original property is in neither and there be no convention respecting it, each State holds to the middle of the stream. *Handly's Lessee vs. Anthony*, 5 Wheat., 374 (5 L.

Ed., 113). Our opinion is that the Beaufort Convention altered the general rule, in that portion of the river where there are islands. In the beginning of the description in the Beaufort Convention, on the hypothesis that the general course of the river was east and west, the boundary was given as "the most northern branch or stream of the River Savannah "from the sea." This language was used to fit the subsequent declaration, "reserving all the islands in the said Rivers Savannah and Tugaloo to Georgia." Giving effect to both phrases, the boundary line where there are no islands is the middle of the main current of the river, *but in that part of the river where there are islands the boundary line is the stream or fork of the river which lies between the islands nearest the South Carolina shore.* Not only is this a fair and proper interpretation of the Beaufort Convention, but if we give it a construction that the middle of the main current of the river in that part where there are islands is the dividing line between the States, we could reach the curious result that islands belonging to Georgia and within the jurisdiction of Georgia would be located within territory belonging to the State of South Carolina where the main current of the river is between the Georgia mainland and its island. Of course, the Commissioners never intended such an anomaly as this. . . . But we do hold that all the Savannah River where it is broken by islands, which is between the island and the Georgia shore, is within the jurisdiction and sovereignty

of Georgia, and all improvements constructed thereon are properly subject to taxation within this State. As to that part of the river which is not broken by islands, the middle thread is the boundary between this State and South Carolina, and it was that part of the river which was involved in the cases of:—

Simpson vs. The State, 92 Ga., 41 (17 S. E., 984) ;
22 L. R. A., 248; 44 Am. St. R., 75.

James vs. The State, 10 Ga. App., 13 (72 S. E. 600.)

and nothing held therein is in conflict with our present holding."

It will be noticed that in this decision the Supreme Court of Georgia directly follows that great principle of law which is enunciated in the first section of our brief and also follows the exact terms of the Treaty of Beaufort, stating that the Treaty of Beaufort had only altered that ancient principle of law by following the northern channel of the river where it was broken by islands. The decision does not decide the exact boundary between a given island which is the territory of Georgia and the South Carolina mainland, but states that the exigencies of the particular case did not require that decision.

The above decision was not only unanimously concurred in by the Justices of the Supreme Court of Georgia, but said decision adopted and confirmed the decision of the arbiters, to whom this question had previously been referred, and whose award had been made by Judge George Hillyer, an eminent Georgia Jurist, from whose report we have derived valuable assistance.

Counsel, however, now submit that the very nature of the question, the boundary, must be one of three lines. Either the northern shore of the island, which would be the southern portion of the river, or the northern portion of the river, which would be the southern shore of South Carolina, or the middle of this northern stream. To submit this question is but to decide it. Whereas, the Code of South Carolina attempts to claim the southern shore of the northern stream as the boundary line, there is absolutely no authority for such a contention. The Treaty of Beaufort did not establish this as the line, but simply established the northern stream of the river, and in establishing the northern stream of the river clearly established it with full knowledge that according to the well established rule the thread of this northern stream would be the boundary. The Governor of Georgia was directed to claim the entire bed of the river, which would carry the State of Georgia to the extreme northern part of the stream or the southern shore of South Carolina. Counsel for Georgia frankly admit that there is no authority for any such contention, but that the only proper solution of this question is to apply the well established boundary rule and follow the thread of this northern stream. South Carolina has clearly admitted this and so far as counsel have been able to ascertain the claim to the contrary in the Code Section is supported by no principle and by no authority.

In 1852, when this question was being agitated by the Governors and Attorneys-General of the respective States, the Governor of South Carolina submitted this question in his message, November third, to the Committee on Federal Relations of the General Assembly of

South Carolina, and on pages 27 and 28 of the record will be found a joint resolution concurred in by both the Senate and House of Representatives on December 15 and December 16 respectively, 1852, the important portion of which resolution is in the following language, as appears on page 28 of the record:

"Resolved, that the boundary between South Carolina and Georgia, as defined in the Convention, concluded at Beaufort by the duly authorized Commissioners of the two States, on the 28th day of April, 1787, and subsequently ratified by the respective legislatures of these States, is the existing boundary between said States."

"Resolved, That the terms of the first Article of the said Convention construed by the undisputed principles of international and common law, fix, as the limit of the respective jurisdictions of the two States, the thread of the middle of the stream designated as their boundary; that is to say, *the thread, or middle, of the most northern branch or stream of the Rivers Savannah and Tugaloo, where these rivers have more than one branch or stream, and the thread or middle of these rivers where there is but one branch or stream.*" (Italics ours.)

The Court's attention is specially called to the last four lines in the above quotation, which are as follows:

"That is to say, the thread or middle of the most northern branch or stream of the Rivers Savannah and Tugaloo where these rivers have more than one branch or

stream, and the thread or middle of these rivers where there is but one branch or stream." (Italics ours.)

This language is so explicit that it is difficult to see how controversy can further be made.

In this connection counsel feel that it is most opportune to quote at some little length from the Argument of Attorney-General Hayne, as contained in his letter of August, 1852, to His Excellency, Governor Means, of South Carolina. Among other things, the Attorney-General said:—

"The only modification which these terms express in regard to the general presumption that the *filum medium aquae* constitutes the line of separation is, that "*the most northern branch or stream*" of the Savannah and Tugaloo, where *those rivers have more streams than one*, is substituted for the whole stream; leaving the presumption in full force and untouched, *where the Savannah River and Tugaloo has but one branch or stream. To follow the filum aquae of the northern branches instead of that of the main channel will of course throw the islands, in all cases, upon the Georgia side of the line of boundary; and accordingly the islands are, in terms reserved to that State.* It is obvious that the thread of the most northern branch being fixed as the boundary, South Carolina would, without other provision, be excluded from all participation, in the southern branches, which in some portions of the river, constitute the best and perhaps the only navigable channel. To provide against such result, the second article of the Convention declares as follows:

"The navigation of the River Savannah, at and from

the bar, and mouth, along the Northeast Cockspur Island, and up the direct course of the main northern channel, along the northern side of Hutchinson's Island, opposite the town of Savannah to the upper end of the said Island, and from thence up the bed of principal stream of the said river, to the confluence of the Rivers Tugaloo and Keowee, and from the confluence up the channel of the most northern stream of the Tugaloo River to its source, and back again by the same channel to the Atlantic Ocean: It is hereby declared to be henceforth equally free to the citizens of both States, and exempt from all duties, tolls, hindrances, interruption or molestation whatsoever, attempted to be enforced by one State on the citizens of the other, and *all the rest* of the River Savannah to the southward of the foregoing description is acknowledged to be the exclusive right of the State of Georgia." (*Watkins' Digest*, Appendix, P. 754).

TERRITORIALY, then, South Carolina is, in effect, declared to be bounded by a thread in the middle of the stream, where there is but one stream, *but which thread, in the case of the intervention of islands, deflects towards her own shore, takes the most northern channel and excludes the islands*" (Italics ours).

This admirable argument of Attorney-General Hayne, made in 1852, is all that Georgia claims. This entire correspondence, with the letters of Attorney-General Hayne to Governor Means and to Governor Cobb is all of file in the State Capitol at Atlanta, Georgia, and must be in the archives of the State of South Carolina, at Columbia.

Counsel further submit that the above solution of this

question is sound, based on common sense, on principle and on authority. The State of South Carolina herself has clearly recognized this principle, as applied to private ownership, in the case of:—

McCullough vs. Wall, 4 Richardson's Law, P. 68;
53 American Dec., 715.

In this case there was a controversy between two persons as to where a line was in a river which separated the mainland of the respective owners. It was shown in this case that an island in the river belonged to one riparian owner rather than to the other and the court distinctly held as follows:—

"The question then, is whether the measurement to fix the boundary of plaintiff's rights should be from his bank to Hill Island, or to the other bank of the river. If the western margin of Hill Island belonged to another person, the exact boundary between that person and the plaintiff would be midway between the island and the western bank of the river."

"If that margin of an island which lies next to a riparian proprietor and on his side of the middle of the whole river, has been lawfully appropriated by another person, then such proprietor's boundary is the filum midway between his bank and the island" (Italics ours).

Counsel respectfully submit that South Carolina has adjudicated this case against herself.

The same principle is announced in the case of:—

Ludwig vs. Overly, 6 Ohio Circuit Court, Dec. 690.

An investigation of the facts in this case will show that the contention which is being made by the State of Georgia is sustained in the following language:

"Now, we suppose that the rule is well established that the riparian rights of Overly must be measured from Island No. 1; the riparian rights of the plaintiffs, of course, start from the mainland, which we name the peninsula. And we think it equally well established that the center of the stream between the island and the peninsula is to be the boundary line between the lands of the two parties. Under this rule, we have no question that the work that was being done by the Overlys at the time in question was upon the northerly side of this center line of the stream."

Many decisions could be cited to the effect that where one riparian owner is also the owner of an island, or islands, in the stream, the boundary would be the thread of the stream between the island, or islands, and the farther shore. For instance, Willow Bar Island, formed by accretion near the main channel of the Mississippi River, being determined as the property of Illinois riparian owners, the Court held that the "present center of the stream between Willow Bar Island and the Missouri Bank" was the boundary between the States of Illinois and Missouri.

Bellefontaine vs. Niedringhaus, 181 Ill., 439; 55 N. F., 184.

Warren vs. Mfg. Co., 86 Me., 32.

Hopkinson Academy vs. Dickinson, 9 Cush, 544.

Wiggenhorn vs. Kountz., 23 Neb. 690.

For a further application and adoption of this rule see:—

"Where the owner of the island also owns the mainland on one side of the stream, for hydraulic purposes, he is entitled to the entire natural flow of water in the channel on the side of the island on which he owns the mainland, and one-half of the flow in the opposite channel."

West, et al, vs. Fox River Paper Co., 521 N. W. 803; 82 Wis., 647.

"When the island is appropriated the boundary is then midway between that and the mainland." 5 Cyc., 902.

"Where an island is formed in the middle of a river, two streams are necessarily formed by the original river, dividing it into two branches; the island itself a bank of the stream on the one side, and the old bank on the mainshore forms the other."

Angell, Law of Watercourses, Section 4 (e) Chapter 1, page 6.

"If an island in a private river has been lawfully appropriated by another person, or reserved in a grant, the thread of the stream midway between the island and the fast land is the boundary of the adjoining owner's title."

Gould, The Law of Waters, 3rd Ed., 329.

By the Treaty of Beaufort all of the islands in the Savannah and Tugaloo rivers were conceded and admitted to belong to the State of Georgia. Therefore, where-

ever there is an island, the State of Georgia owns to, and the boundary between the two States is *medium filum aquae* between the several islands and the South Carolina shore.

VII.

There is just one other possible question which might arise in this case and, if it is practicable, counsel for the State of Georgia submit that it should be covered in the decree of the Court. If counsel for the State of Georgia are correct in defining the boundary line between the two States, the question might arise as to how the thread of the stream is to be determined in relation to the island, the South Carolina shore, and the main thread of the stream, where it is broken by islands.

To illustrate: In following a line up the thread of the stream midway between the two great embankments of the river an island arises in the river several hundred yards away. Should this line go up the thread of the stream, and then at right angles to the edge of the island and cross said island to the middle of the stream between the island and the South Carolina shore, or should this line, before it reaches the island, deflect from the thread of the main stream and follow the thread of the auxiliary stream, which runs around the island and empties into the main channel, following the thread of this auxiliary stream until it connects with the main flow of the river?

This does not seem to be a fanciful suggestion, but as this river develops, it may become another practical question.

This boundary question has been in dispute for so many years that if possible all conceivable questions should be settled in this decree.

Counsel for the State of Georgia believe that whenever the Savannah River presents the conditions above mentioned that it would be feasible to follow the deflecting line from the main stream around and between the island in question and the South Carolina shore, and submit that this is the true rule to be applied to all such situations.

In the light of the foregoing discussion and authorities counsel for the State of Georgia respectfully insist that the true boundary line between the two States of Georgia and South Carolina is up the most northern branch of the River Savannah from the sea, or mouth of such stream, to the fork or confluence of the Rivers Tugaloo and Seneca, midway between the opposite banks of said northern branch or stream, and when said stream is broken by an island or islands, then the line deflects from the thread of the main stream around said island, following a line midway between said island and the South Carolina mainland until this line again strikes the thread of the main stream at the junction of the auxiliary stream and the main flow of the Savannah River, and so on up the northern branch of the Tugaloo River and the Chattooga River until the latter river reaches the northern boundary of South Carolina at the thirty-fifth (35th) degree of North Latitude.

All of which is respectfully submitted.

GEORGE M. NAPIER,
Attorney-General, State of Georgia.

SEWARD M. SMITH,
Assistant Attorney-General, State of Georgia.
Post Office Address, Atlanta, Ga.

THOS. F. GREEN,
GREEN & MICHAEL, *Special Counsel.*
Athens, Ga. *Post Office Address, Athens, Ga.*
Of Counsel.



IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1921.

No. 22, Original.

THE STATE OF GEORGIA

v.s.

THE STATE OF SOUTH CAROLINA.

BRIEF FOR THE DEFENDANT.

This is an action instituted in the original jurisdiction of the Court on the part of the State of Georgia against the State of South Carolina pursuant to a resolution adopted August 21, 1917, by the General Assembly of the State of Georgia, whereby the Attorney General of the State of Georgia was authorized and requested to institute a suit or suits in the Supreme Court of the United States by and in the name of the State of Georgia against the State of South Carolina "for establishing the claim and boundary of Georgia to and including the entire bed of said Savannah and Tugaloo rivers in their entire lengths, islands and all, clear over to the South Carolina shore, at the ordinary mean-water level

of said rivers, and to prosecute for and recover the same wherever any diverse occupancy does or may exist."

The original bill in chancery was served upon the defendant through the Governor and the Attorney General, respectively, of the State of South Carolina, on April 9, 1919, and within due time thereafter an answer to said bill in chancery was filed with the clerk of this Court, and copies thereof served upon the Governor and the Attorney General, respectively, of the State of Georgia.

The complaint alleges, in substance, without reference to pact or treaty, that the State of Georgia is entitled to have the Court decree that the eastern boundary of the State of Georgia is the "*Northern or eastern bank of the rivers Chattooga, Tugaloo and the Savannah, at the ordinary mean-water level on their eastern banks*, and for such other and further relief as the necessity of the case and the principles of equity demand. The answer of the defendant, the State of South Carolina, contends, in substance, that the true boundary line between the States is that fixed by the pact, pursuant and agreeably to the 9th article of the confederation, entered into by and between authorized commissioners from the respective States in the convention concluded at Beaufort, South Carolina, on the 28th day of April, in the year 1787, which said pact or treaty was thereafter duly ratified by the legislative bodies of the two respective States and by the Congress assembled of the United States, and that by virtue of said pact or treaty the true line dividing the two States should be decreed by the Court to be the low-water mark at the southern shore of the most northern stream of the rivers Savannah and Tugaloo, respectively, where said rivers are broken by

islands, and the middle thread of the stream of said rivers where they flow in one stream or volume, and the middle thread of the stream, or the southern shore, of the River Chattooga, saving to herself at all times herein all manner of benefits of exception or otherwise that can or may be had.

On June 7, 1920, in response to a motion directed to this purpose, the Court appointed Chas. S. Douglas, Esq., of Washington, D. C., as special master to take and report the testimony and exhibits without conclusions of law or findings of fact, and that in pursuance thereto the testimony was taken and reported to the Court, and said testimony, with the exhibits therein, constituting the report of the special master by agreement of counsel, is the *record* upon which the Court is to determine the issues involved. By virtue of the stipulation, however, at page 22, folios 40 and 41, inclusive, this record is to be supplemented in the hearing and consideration of this case by reference to the *originals or certified copies of the originals*, of such documents as are stated and noted in evidence but not set out in detail.

Attention of the Court is, in the outset, directed to the stipulation embraced in the record at pages 18 to 23, inclusive, wherein the salient facts upon which the case must rest are concisely and more logically recited.

It will be observed that the territory comprising the State of Georgia was formed from a portion of the territory originally comprising a part of the province of South Carolina. In the case of *Handly's Lessee v. Anthony et al.*, 5 Wheat., 374-382; 5 L. Ed., 113, the Court said:

"When a river is the boundary between two nations or States, if the original territory is in neither, and

there be no convention respecting it, each holds to the middle of the stream, but when, as in this case, one State is the original proprietor and grants the territory on one side only, it retains the river within its own domain, and the newly created State extends to the river only, and the low-water mark is its boundary."

In the stipulation to which the attention of the Court has been directed, pages 18 to 23, inclusive, of the record, and especially folios 38 and 39, inclusive, it is conceded by the parties to this suit that the Treaty of Beaufort, and the lines fixed therein, in so far as they are defined, are binding. Irrespective of such stipulation, the defendant respectfully submits that the boundary established and fixed by compact between nations becomes conclusive upon all the subjects and citizens thereof, and binds their rights, and is to be treated to all intents and purposes as the true, real boundary, and the construction of such compact is a question for judicial determination.

Rhode Island v. Mæc, vol. 12, Sup. Ct. Rep., January term, 1838, page 657.

The Beaufort convention was the result of a petition by the State of South Carolina to the United States Congress under the 9th Article of the Articles of Confederation of 1777. It appears that the formalities and prerequisites incident thereto were complied with. Moreover, the boundary in so far as it is definite and established by the Beaufort Treaty, has been recognized and acquiesced in by the two States since the date of its adoption, and the provisions of

the compact would in no event be disturbed by a court of chancery at this time.

Maryland v. West Va., 217 U. S., 1; 54 L. Ed., 645.

Louisiana v. Miss., 202 U. S., 1; 50 L. Ed., 913.

Virginia v. Tenn., 148 U. S., 503; 37 L. Ed., 637.

Indiana v. Kentucky, 136 U. S., 479; 34 L. Ed., 329.

Rhode Island v. Mass., 4 How., 591; 11 L. Ed., 1116.

Rhode Island v. Mass., 15 Pet., 233; 10 L. Ed., 721.

Hence the whole question for determination in this suit is a construction of that treaty in respect to its indefiniteness and in respect to the contentions of the respective parties-litigant herein, and to determine how far the Treaty of Beaufort has altered the common law in respect to the beds and the navigable rights in the rivers forming the boundary line between them.

By a reference to the map set out as an exhibit in the record at page 94, which is a map of the Beaufort District of South Carolina, surveyed by C. Vignoles and adopted for Mills' Atlas of 1825, as well as from a reference to the U. S. Coast and Geodetic Survey (U. S.—East Coast. Tybee Roads—Savannah River and Wassaw Sound, Georgia), it will be seen that at the mouth of the Savannah River there is what is termed "Cockspur Island," and there are Long Island, Elba Island, and a series of other islands up the river above this island which for some distance divides the Savannah River into two streams. The grant of the Lords Proprietors constituted the province of "Carolina," which embraced the present States of North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Tennessee. Carolina was first divided into two provinces, to wit, North Carolina and South

Carolina, and subsequently, in 1732, Georgia was carved out of South Carolina territory by royal grant wherein it was described as: "all those lands, countries and territories situate, lying and being in that part of *South Carolina* in America which lie from the most northern Stream of a River there commonly called the Savannah all along the seacoast to the southward unto the most southern stream of a certain other great Water or River called the Alatomaha." (See Record, page 20, folios 34-35, inclusive.) Again, at page 19 of record, folio 34, it will be seen, upon petition having been made for the establishing of a province in the American continent for the poor of Europe, that the petition was referred to the Board of Trade of Great Britain, which Board of Trade recommended that His Majesty would be pleased to incorporate the petitioners in a charitable society, and further recommended that His Majesty be pleased to grant said petitioners and their successors forever "all that tract of land in his province of South Carolina lying between the rivers Savannah and Alatomaha, to be bounded by the most navigable and largest *branches* of the Savannah, and the most southerly branch of the Alatomaha." The Beaufort convention stipulated (see Record, page 25, folios 45-49, inclusive), in Article I, as the boundary: "the most northern branch or stream of the River Savannah, from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugaloo and Keowee; and from thence, the most northern branch or stream of the said River Tugaloo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugaloo extends so far north, *reserving all the islands in the said rivers Savannah and Tugaloo to Georgia,*" etc. Article II prescribes that the

navigation of the River Savannah at and from the bar and mouth, along the northeast side of Cockspur Island, and up the direct course of the main northern channel along the north side of Hutchinson's Island, opposite the town of Savannah, to the upper end of said island, and from thence up the bed or principal stream of the said river to the confluence of the rivers Tugaloo and Keowee, etc., shall be equally free to the citizens of both States, etc. This second article of the so-called pact or treaty under the decision of the State of South Carolina *v.* Georgia, reported in 3 Otto., 4-14, inclusive; 93 U. S., 23; L. Ed., 282, would be of no value other than possibly to throw some light upon the *intent* of the States as expressed in this treaty, for in the case of South Carolina *v.* Georgia (*supra*) the State of South Carolina stands in no better position, so far as her navigation rights are concerned, than she would if the pact of 1787 between herself and Georgia had never been made; that the pact defined the boundary between the two States, and also defined the navigable rights of the two States, which the decision holds would be precisely the same as that which the two respective States would have possessed under the common law, inasmuch as the original charter of the Province of Georgia, fixed the Savannah River as the boundary between that province and South Carolina. Quoting the decision, the Court said:

"It needed no compact to give to citizens of adjoining States a right to the free and unobstructed navigation of a navigable river which was the boundary between them. Moreover, after the treaty between the two States was made, both parties to it became members of the United States. Both adopted the Fed-

eral Constitution, and thereby joined in delegating to the General Government the right to 'regulate commerce with foreign nations and among the several States.' Whatever, therefore, may have been their rights in the navigation of the Savannah River before they entered the Union, either as between themselves or against others, they both agreed that Congress might thereafter do everything which is within the power thus delegated * * *. Prior to the adoption of the Federal Constitution the States of South Carolina and Georgia together had complete dominion over the navigation of the Savannah River. By agreement they might have regulated it as they pleased. It was in their power to prescribe, not merely on what conditions commerce might be conducted upon the stream, but also how the river might be navigated, and whether it might be navigated at all. They could have determined that all vessels passing up and down the stream should pursue a defined course, and that they should pass along one channel rather than another where there were two. They had plenary authority to make improvements in the bed of the river, to divert the water from one channel to another, and to plant obstructions therein at their will."

In this decision, it may not be amiss to suggest that the Court recognizes as a matter of fact that opposite the city of Savannah the river is divided "by Hutchinson's Island, and that there is a natural channel on each side of the island."

In the light of the foregoing, it will be observed that, in so far as the navigable feature of the case is concerned, the Treaty of Beaufort made no changes in the rights of navigation other than those obtaining under the common law.

In paragraph 7 of the original bill of complaint herein, purporting to quote from the original letters patent from the King, it is alleged that Georgia, in being taken out of the State of South Carolina, was described as "lying from the most northern part of a stream or river called the Savannah." This term, "northern part," occurs repeatedly throughout the bill of complaint, and, as stated in the preamble of this argument, seems to have resulted from a misprint which had been, through oversight or other inadvertence, perpetuated up until the present in the official documents of the State of Georgia pertaining to the boundary line between the two States. The true wording of all the documents pertaining to this boundary is not as alleged in the complaint, but, on the other hand, it is consistently "the most northern stream of the river called the Savannah from the sea or mouth of said stream." Hence it is contended that what was referred to by the framers of the Beaufort Treaty was that the boundary should extend from low-water mark on the southern shore of the Cockspur Island, or Hutchinson's Island, at or near the mouth of the Savannah River, which islands divide the Savannah River into two streams, forming a northern stream and a southern stream, respectively, along the coast to the most southern stream of the River Altamaha. It was intended to preserve the status of the proprietorship of the islands within this stream, and to reserve them to the State of Georgia, creating where the Savannah and Tugaloo rivers were broken by islands such boundary line as would accomplish this end. Inasmuch as it was fully within the power of the two States to change the law of navigation by treaty or otherwise, the second article of the treaty would have been purely superfluous had it not occurred to

the framers of the treaty that the article in its correct interpretation would further safeguard to the State of Georgia merely the property rights in the islands which, under the common law and in the absence of a treaty, would have been South Carolina territory. If, as held in the decision of the State of S. C. v. Georgia, 23 L. Ed., 782, the rights of navigation on these rivers were not changed by the Treaty of Beaufort, it follows that the law pertaining to the boundaries between States, where those boundaries consist of navigable rivers, is the same as that obtaining under the common law. In this event, the rivers, *where unbroken by islands*, would in themselves constitute the boundary between the two States and would be equally free to the respective States for *navigation purposes*, and the entire bed of the rivers would, by virtue of the province of Georgia having been carved out of the province of South Carolina, belong to the State of South Carolina, and the boundary line formed by these rivers, *where unbroken by islands*, would be low-water mark on the Georgia, or southern bank of these rivers, Savannah, Tugaloo, and Chattooga.

A careful reading and analysis of the Treaty of Beaufort, and especially Article I of the treaty, will show conclusively that the terms "branch" and "stream" are used synonymously and interchangeably throughout the document, and in no event could be construed to imply that the contention of the plaintiff herein, to wit, that the Eastern boundary of the State of Georgia is the northern or eastern bank of the rivers Chattooga, Tugaloo and Savannah, is correct. If this contention could be sustained, the stipulation in Article I of the treaty "reserving all the islands in said rivers Savannah and Tugaloo to Georgia" would mean absolutely nothing.

The inevitable significance to be attached to this stipulation is that which has already been suggested in connection with the provisions as to navigation stipulated in Article II of the treaty, to wit, that the representatives of the State of Georgia in the Beaufort convention clearly conceded the common-law rights of South Carolina in the premises and acknowledged her title and property rights in the beds of the rivers. Hence it is respectfully submitted that under the practice in courts of chancery, irrespective of the petition or prayer in the complaint and answer, the Court is entitled to do equity and adjudicate the issues involved so as to mete out to the litigants their full rights under the law; and if the facts and the law so warrant, the boundary line should be so declared as to give to the State of South Carolina possession of the entire bed of the three rivers except where the rivers Tugaloo and Savannah are broken by islands, and where this is the case the boundary line should be low-water mark of the southern shore of these islands, and that for navigable purposes, and in so far as the streams themselves are concerned, the boundary line should be according to the doctrine of the *Thalweg*, enunciated in the case of *Ark. v. Tenn.*, reported in 246 U. S.; 62 L. Ed., 638, the middle of the main navigable channel in these rivers.

For the information of the Court and pertinent to the various questions involved, the following decisions with their syllabi are cited:

Constitutional Law.

South Carolina Constitution of 1895.

Art. 1, Section 28.—"All navigable waters shall forever remain public highways free to the citizens of the State and the United States without taxes, impost or toll imposed; and no tax, poll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly."

Art. 14, Section 1.—"The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary to this and any other State bounded by the same; and they, together with all navigable waters within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly."

(See *McMeekin v. Central, etc., Power Co.*, 80 S. C., 512; 61 S. E., 1020; 128 Am. St. Rep., 885.)

The Constitution of the State of Georgia as amended and incorporated in Prince's Digest Laws of Georgia to 1837, Section 23, declaration of the boundaries of the State, to wit:

"That is to say, the limits, boundaries, jurisdictions, and authority of the State of Georgia do and

did and of right ought to extend from the sea, or the mouth of the River Savannah, along the northern branch or stream thereof to the fork or confluence of the rivers now called Tugaloo and Keowee, and from thence along the most northern branch or stream of the said River Tugaloo till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugaloo extends so far north, reserving all the islands in the said rivers Savannah and Tugaloo to Georgia; but if the head spring or source of any branch or stream of the said River Tugaloo does not extend to the north boundary line of South Carolina, then the West line to the Mississippi," etc.

Statutory Law.

See convention of Beaufort incorporated in Hotchkiss' Statute Law of Georgia and State Papers (Appendix), pages 913 to 917, inclusive.

Chapter I, Article 1, Code of Georgia, 1867, paragraphs 15 to 19, inclusive. Section 16 is as follows:

"The boundary between Georgia and South Carolina shall be the line described as running from the mouth of the River Savannah, up said river and the Rivers Tugaloo and Chattooga, to the point where the last-named river intersects with the thirty-fifth parallel of north latitude, conforming, as much as possible, to the line agreed on by the commissioners of said States at Beaufort on the 28th April, 1787."

J. L. Petigru's Code of South Carolina, 1860, Part First, "Territory of the State," in which the boundary line between Georgia and South Carolina is described as follows:

"From the State of Georgia South Carolina is divided by the Savannah River, from its entrance into the ocean to the confluence of the Tugaloo and Keowee rivers; thence by the Tugaloo River to the confluence of the Tugaloo and Chattooga rivers; thence by the Chattooga River to the North Carolina line aforesaid, in the thirty-fifth degree of north latitude, the line being low-water mark at the southern shore of the most northern stream of said rivers, where the middle of the rivers is broken by islands, and the middle thread of the stream where the rivers flow in one stream or volume."

See Charter of Georgia and Gov. Reynolds' commission, in the same terms. Watkins' Digest, 737. (Convention of Beaufort, 1787.)

Shultz v. Bank, U. S. Circuit Court, 1822.

Bank v. Harper, Columbia, Dec., 1833.

Handly v. Anthony, 5 Wheat., 374.

See Part 1, Chap. 1, Sec. 1, Code of Laws of S. C., 1902, vol. 1.

See also Part 1, Chap. 1, Sec. 1, vol. 1, Code of Laws of South Carolina, 1912, which describes the boundary between Georgia and South Carolina as follows:

"From the State of Georgia, South Carolina is divided by the Savannah River from its entrance into the ocean to the confluence of the Tugaloo and Seneca Rivers; thence by the Tugaloo River to the confluence of the Tugaloo and Chattooga rivers; thence by the Chattooga River to the North Carolina line aforesaid, in the thirty-fifth degree of north latitude, the line being low-water mark at the southern

shore of the most northern stream of said rivers where the middle of the rivers is broken by islands, and the middle thread of the stream where the rivers flow in one stream or volume.

Charters and Treaties.

The first charter granted by King Charles Second to the Lords Proprietors of Carolina, pages 22 to 31, inclusive, Statute of S. C., vol. 1.

Second charter of Carolina, 1665, *id.*, pages 31 to 40, inclusive.

See the Act for establishing the agreement with seven (7) of the Lords Proprietors of Carolina for the surrender of their title and interest of that province to His Majesty, (1729), *id.*, pages 60 to 71, inclusive.

See the ordinance to nullify an Act of Congress of the United States to provide for the collection of duties on imports, commonly called the Force Bill, pages 400-401, inclusive, *id.*

See extract from Gov. Drayton's view of South Carolina, 1802, *id.*, pages 404 to 410, inclusive.

See the ordinance ratifying and confirming the convention between the States of South Carolina and Georgia concluded at Beaufort, in the State of South Carolina, on the 28th day of April, 1787, and in the 11th year of the Independence of the United States of America, pages 411 to 414, inclusive, *id.*

The defendant alleges in paragraph 26 of its answer that the construction of the Beaufort Treaty, to wit, that the thread of the stream where there are no islands is the boundary line, and that the northern shore of the island in the rivers Tugaloo and Savannah, respectively, where these rivers

are broken by islands is the boundary line is *res adjudicata*, and, therefore, under the rules of practice it is necessary that the defendant introduce in evidence such authorities as sustain this contention. These authorities are as follows:

(1) The decision *In re Shultz & Breithaupt et al. v. the State Bank of Ga. et al.* (1822 MSS. Decision per Johnson, justice presiding, U. S. Circuit Court), a certified copy of which is offered in evidence. This decision was confirmed in the case of Jos. J. Kenedy, trustee of Henry Shultz v. The Bank of the State of Ga., reported in 8 How., page 586; 12 L. Ed., 1209.

(2) *Fletcher v. Peck*, 6 Cranch., U. S., Sup. Ct. Rep., page 86; 3 L. Ed., 162.

(3) *S. C. v. Georgia et al.*, 3 Otto., U. S. Sup. Ct. Rep., 4. This decision does not discuss nor attempt to pass upon any matters pertaining to the boundary lines, but merely upon those matters pertaining to navigation of the three rivers forming the boundary line between the States and inferentially leaves the boundary line as suggested and as fixed by the treaty intact.

(4) *Georgia Railway & Power Co. v. Wright, Comptroller General, et al.*, 146 Ga. St. Rep., 29, and cases therein cited, in which the contentions of the defendant as to the construction of the Beaufort Treaty are sustained.

See *Simpson v. State*, 92 Ga., 41; 17 S. E., 984; 22 L. R. A., 248; 44 Am. St. Rep., 75.

Also *James v. State*, 10 Ga. App., 13; 72 S. E., 600.

Acquiescence.

Arkansas v. Tenn., 246 U. S., 158; 62 L. Ed., 638.
Maryland v. W. Va., 217 U. S., 1; 54 L. Ed., 645.
Louisiana v. Miss., 202 U. S., 1; 50 L. Ed., 913.
Virginia v. Tenn., 148 U. S., 503; 37 L. Ed., 537.
Indiana v. Kentucky, 136 U. S., 479; 34 L. Ed., 329.
Rhode Island v. Mass., 4 How., 591; 11 L. Ed., 1116.
Rhode Island v. Mass., 15 Pet., 233; 10 L. Ed., 721.
Missouri v. Iowa, vol. 7, U. S. Sup. Ct. Rep., Jan.
 term, 1849, page 660.

The Doctrine of the "Thalweg."

The rule adopted, known as the rule of the "Thalweg," is that where navigable streams form the boundary line between two States the controlling consideration is that which preserves to each State *equality in the navigation* of the river, and that in such instance the boundary line is the middle of the *main navigable* channel of the river.

See

Ark. v. Miss., *supra*.

Ark. v. Tenn., 246 U. S., 158; 62 L. Ed., 633; 38 Sup.
 Ct. Rep., 301.

See also the following decisions:

Louisiana v. Miss., 202 U. S., 1, 49; 50 L. Ed., 913,
 930; 26 Sup. Ct. Rep., 408, 571.

Washington v. Oregon, 211 U. S., 127, 134; 53 L.
 Ed., 118, 119; 29 Sup. Ct. Rep., 47; 214 U. S.,
 205, 215; 53 L. Ed., 969, 970; 29 Sup. Ct. Rep.,
 631.

The boundary line between two States, where in dispute, must be determined upon a consideration of the situation existing at the time of the enacting of the statute or adoption of the treaty purporting to establish the boundary line.

Minnesota v. Wis., U. S. Sup. Ct. Adv. Op., 1919-1920, No. 11, page 345.

In the case of *Maryland v. West Virginia*, *supra*, it was held:

"1. The boundary-line between the States of Maryland and West Virginia from the head waters of the Potomac to the Pennsylvania line is adjudged to be the 'Deakins' or 'old State' line, run in or about the year 1788, which ever since has been recognized as the boundary and has served as such, although steps have been taken from time to time looking towards a more effectual legal settlement and delimitation of the boundary, none of which have been effectual or such as to disturb the continuous possession of the people claiming rights up to the boundary line."

"2. The State of West Virginia is not, as against the State of Maryland, entitled to the Potomac River to the north bank thereof; her title runs only to high-water mark on the West Virginia shore."

"When a river is the boundary between two nations or States, if the original property is in neither and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one State (Virginia) is the original proprietor and grants the territory on one side only, the newly

erected State extends to the river only, and the low-water mark is its boundary."

SAM'L M. WOLFE,

Attorney-General for the State of South Carolina;

ALVA M. LUMPKIN,

Acting Assistant Attorney-General,

Attorneys for the State of South Carolina, Defendant.

(5184)



IN THE
Supreme Court of the United States

OCTOBER TERM, 1921

Number 16, Original.

THE STATE OF GEORGIA,
Complainant,

vs.

THE STATE OF SOUTH CAROLINA,
Respondent.

DECREE

In accordance with the opinion of the Court delivered by Mr. Justice Clarke, in the above stated cause, and in order to make effective the conclusions of the court:

It is ordered, adjudged and decreed that the boundary between the states of Georgia and South Carolina is and shall be the rivers Savannah, Tugaloo and Chattooga to the point where the latter river touches the North Carolina line at the thirty-fifth parallel of North latitude; and said boundary

line is hereby established and declared to be accurately as set forth in the opinion of the court as follows:

1st. Where there are no islands in the boundary rivers, the location of the line between the two states is on the water midway between the main banks of the river when the water is at ordinary stage;

2nd. Where there are islands, the line is midway between the island bank and the South Carolina shore when the water is at ordinary stage;

3rd. That all islands in the Chattooga river are reserved to Georgia as completely as are those in the Savannah and Tugaloo Rivers.

4th. It is further ordered, that the parties to this suit be permitted and authorized, at any time the circumstances may necessitate it, to locate and monument the boundary line aforesaid, in accordance with the provisions herein, the same to be done either with or without a commission, as they may be advised.

It is further ordered, adjudged and decreed that the costs of this suit shall be equally divided between the said two states.

And it is further ordered, adjudged and decreed that the Clerk of this court do forthwith transmit to the Chief Magistrates of the states of Georgia and South Carolina copies of this decree duly authenticated under the seal of this Court.

Chief Justice.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1921.

No. 16, Original.

THE STATE OF GEORGIA, Complainant,
vs.
THE STATE OF SOUTH CAROLINA, Respondent.

SUPPLEMENTAL DECREE.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1921.

No. 16, Original.

THE STATE OF GEORGIA, COMPLAINANT,
vs.
THE STATE OF SOUTH CAROLINA, RESPONDENT.

SUPPLEMENTAL DECREE.

In accordance with the opinion of the Court, delivered by Mr. Justice Clarke, in the above-stated cause and in order to make effective the conclusions of the Court:

It is ordered, adjudged, and decreed that the boundary between the States of Georgia and South Carolina is and shall be the rivers Savannah, Tugaloo, and Chattooga to the point where the latter river touches the North Carolina line at the thirty-fifth parallel of north latitude; and said boundary line is hereby established and declared to be accurately as set forth in the opinion of the Court, as follows:

1st. Where there are no islands in the boundary rivers the location of the line between the two States is on the water midway between the main banks of the river when the water is at ordinary stage.

2d. Where there are islands, the line is midway between the island bank and the South Carolina shore when the water is at ordinary stage, the relative status of the boundary line to be preserved by a line drawn in accordance with the foregoing at right angles to a line drawn across the river in contact with either extremity of the island and a line drawn at right angles with such line between the island and the South Carolina shore.

3d. That the islands in Chattooga River are reserved to Georgia under the Treaty as completely as are those in the Savannah or Tugaloo Rivers, it being understood that only such islands are Georgia territory under the terms of the Beaufort Treaty as are of a natural and permanent formation, and such as were in existence at the date of the Treaty.

4th. That the parties to this suit may at such time as the circumstances may necessitate or warrant, by mutual consent, locate and monument the boundary line at any point in the boundary rivers in accordance with the provisions of this decree.

It is further ordered, adjudged, and decreed that the costs of this suit shall be equally divided between the two States.

And it is further ordered, adjudged, and decreed that the Clerk of this Court do forthwith transmit to the Chief Magistrates of the States of Georgia and South Carolina copies of this decree duly authenticated under the seal of this Court.

Chief Justice.

Office Supreme Court, U. S.
FILED


MAY 27 1920

JAMES D. MAHER,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

 16

No.  Original.

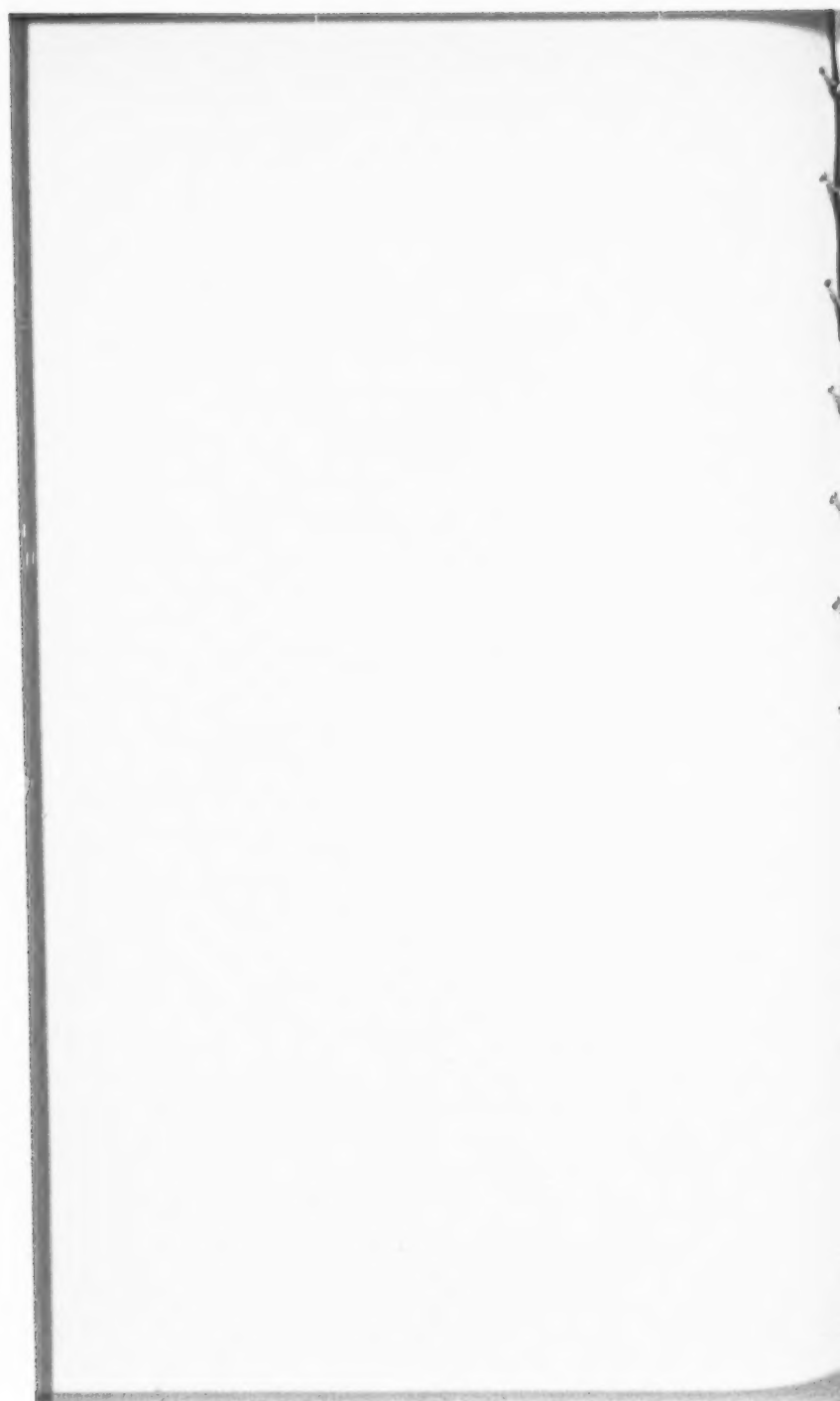
THE STATE OF GEORGIA, COMPLAINANT,

vs.

THE STATE OF SOUTH CAROLINA.

MOTION FOR ORDER OF REFERENCE.

SAMUEL M. WOLFE,
A. M. LUMPKIN,
Of Counsel for the State of
South Carolina, Defendant.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 22, Original.

IN EQUITY.

THE STATE OF GEORGIA, COMPLAINANT,

vs.

THE STATE OF SOUTH CAROLINA.

MOTION FOR ORDER OF REFERENCE.

Comes now the defendant herein, by counsel, and moves the court for an order referring the above-entitled cause to a special master to be selected by the court to take such testimony as may be necessary in the cause and to receive in evidence such exhibits as may be offered by the parties hereto pertinent to the issues made by the pleadings herein, and that said special master have power only to report such testimony to the court without conclusions of law or fact.

SAM'L M. WOLFE,
Counsel for Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 22, Original.

THE STATE OF GEORGIA, *Complainant*,*vs.*THE STATE OF SOUTH CAROLINA, *Respondent*.

**MOTION ON BEHALF OF STATE OF SOUTH CAROLINA
FOR ORDER OF REFERENCE HEREIN.**

To Honorable Hugh M. Dorsey, Governor of the State of Georgia; Honorable R. A. Denny, Attorney General for the State of Georgia, and Thomas F. Green, Esq., of counsel for complainant herein:

Please take notice that the undersigned, as counsel representing the State of South Carolina in the above-entitled proceeding, will apply to the Supreme Court of the United States in open court on Monday, the 31st day of May, 1920, at the hour of 12 m., or as soon thereafter as counsel can be heard, for an order referring the above-entitled cause to a special master selected by the court to take such testimony as may be necessary in the cause, and to receive in evidence such exhibits as may be offered by the parties hereto pertinent to the issues made by the pleadings herein, the said special master to have power only to report such testimony to the court without conclusions of law or fact.

This reference being necessary in order that the testimony and documentary evidence affecting the issues herein may be

properly correlated by such master and reported to the court for its convenience in hearing the cause at such time as the court may direct.

This motion will be based upon the pleadings as already filed in this court.

SAM'L M. WOLFE,
Attorney General for the
State of South Carolina.
A. M. LUMPKIN,
Of Counsel for the State of
South Carolina, Respondent.

Columbia, S. C., May 15, 1920.

Service of the above notice is hereby accepted and acknowledged this 18th day of May, 1920, at Atlanta, in the State of Georgia, and at Athens, in the said State of Georgia, at the offices of the undersigned counsel for the State of Georgia, respectively, the time intervening said service and the date of the proposed motion being agreed to and any objections as to sufficiency of time being waived.

HUGH M. DORSEY,
Governor of the State of Georgia.
R. A. DENNY,
Attorney General for the
State of Georgia.

THOS. F. GREEN,
Of Counsel for the State
of Georgia, Complainant.

[Endorsed:] Original. In the Supreme Court of the United States, October Term, 1919. No. 22, original. The State of Georgia, complainant, *vs.* The State of South Carolina, respondent. Motion on behalf of State of South Carolina for order of reference herein. S. M. Wolfe, attorney general for the State of South Carolina; A. M. Lumpkin, of counsel for the State of South Carolina, respondent. Original.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

Number 22, Original.

THE STATE OF GEORGIA, *Complainant,*
against
THE STATE OF SOUTH CAROLINA, *Respondent.*

CONSENT-ORDER OF REFERENCE.

Pursuant to notice herein the parties hereto, by their respective counsel, consent, upon motion of counsel for the respondent, to an order of reference herein, and it is therefore ordered that in view of the nature of this case and the necessity of properly correlating documentary evidence and the taking of testimony that this case be, and it is hereby, referred to ———, in the city of Washington, District of Columbia, as special master to take the testimony pursuant to the notice herein served and filed with the clerk of this court and to report the said testimony at the fall term, 1920, of this court without his conclusions of law and findings of fact.

Chief Justice.

Washington, D. C.

This — day of —, 1920.

We consent to the above order:

R. A. DENNY,

Attorney General for the State of Georgia.

HUGH M. DORSEY,

Governor of the State of Georgia.

THOS. F. GREEN,

Of Counsel for the State of Georgia.

[Endorsed:] In the Supreme Court of the United States.
October Term, 1919. No. 22, original. The State of
Georgia, complainant, against The State of South Carolina,
respondent. Consent-order of reference.

(1553)

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In the Supreme Court of the United States

THE STATE OF GEORGIA,
Complainant,

vs.

THE STATE OF SOUTH CAROLINA,
Respondent,

No.

ORIGINAL.

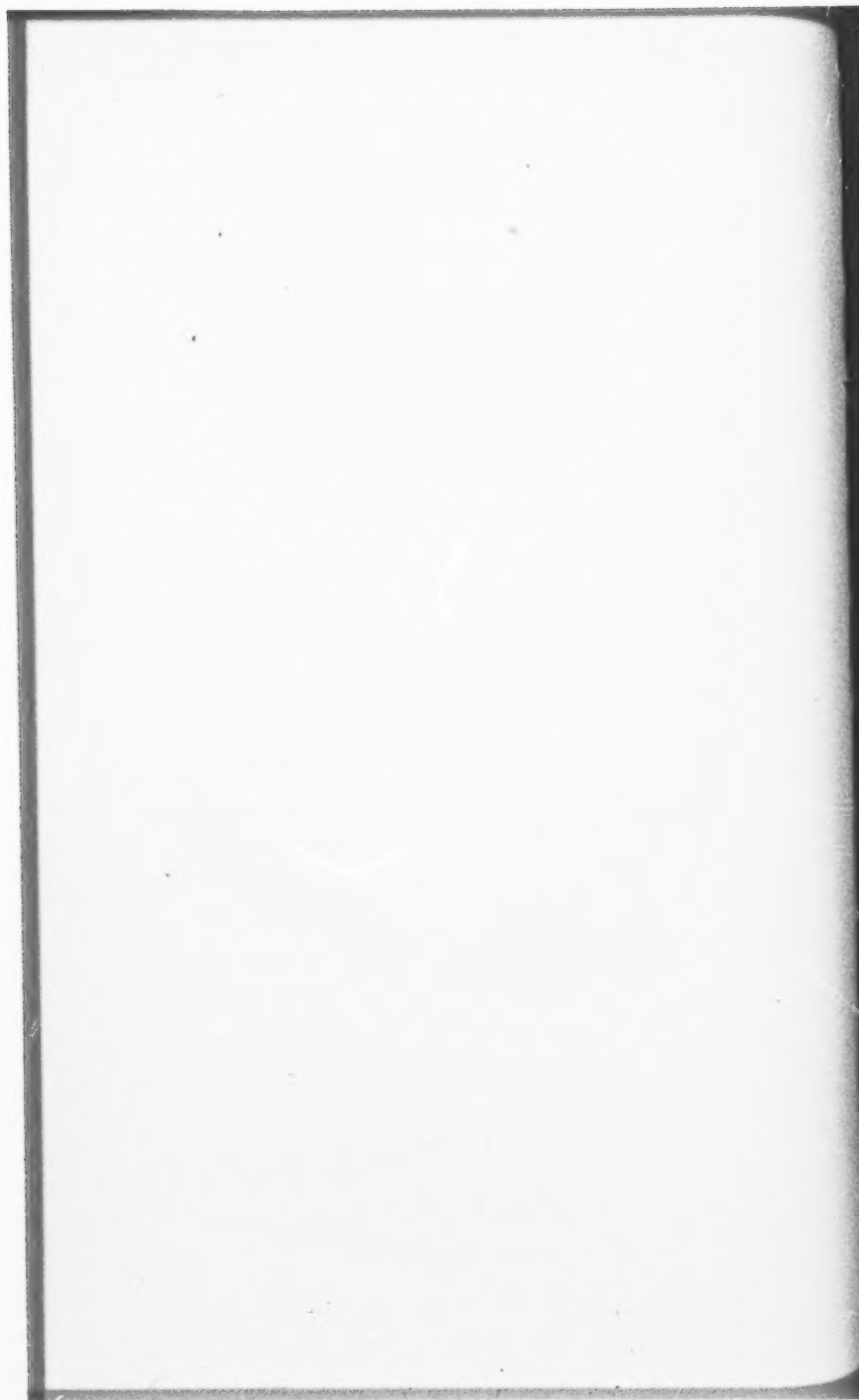
Comes now the complainant in the above entitled cause, the State of Georgia, by the Attorney-General, Clifford Walker, and Thomas F. Green, of counsel, and respectfully asks leave to file the original bill in chancery hereto attached.

THE STATE OF GEORGIA,

By

Attorney-General of Georgia.

Of Counsel.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

THE STATE OF GEORGIA

vs.

THE STATE OF SOUTH CAROLINA.

} Original Bill
} in Chancery,
} No. ———

BILL OF COMPLAINT.

To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Georgia, one of the United States of America, by and through its Governor, the Honorable Hugh M. Dorsey, brings this its bill of complaint against the State of South Carolina, also one of the United States of America, and complains and says as follows:

I.

That the leave of this Honorable Court has been first given to the State of Georgia to file this its complaint against the respondent in this case, the State of South Carolina.

II.

That on August 21st, 1917, the legislative branch of the State of Georgia passed the following resolution:

“WHEREAS, Serious dispute exists as to boundary between the States of Georgia and South Carolina along the Savannah and Tugalo rivers, all the way from the mouth of said Savannah river to the head of the Tugalo river at the junction of the Keowee and Chattooga rivers, and on to the North Carolina line, and,

WHEREAS, Public policy as affecting the people of both States and the rights of Georgia require

that all doubt or cloud as to the jurisdiction, or law enforcement, or title, or taxing power, or franchises, touching localities in question, and boundary between the two States should be, without delay, cleared away, correctly adjudicated and finally settled;

THEREFORE, RESOLVED, That His Excellency, the Governor, be and he is hereby authorized and requested to institute a suit, or suits, in the Supreme Court of the United States, by and in the name of the State of Georgia, against the State of South Carolina for establishing the claim and boundary of Georgia to and including the entire bed of said Savannah and Tugalo rivers in their entire lengths, islands and all, clear over to the South Carolina shore, at the ordinary mean water level of said rivers; and to prosecute for and recover the same wherever any adverse occupancy does or may exist."

This suit is now filed by the Governor of Georgia in conformity with the aforesaid resolution.

III.

Your orator shows that Charles the Second, King of Great Britain, by charter dated March 24th, 1663, in the fifteenth year of his reign, granted to eight persons as therein named, as lords, proprietors thereof, all the lands lying and being within his dominions of America between thirty-one and thirty-six degrees of South latitude, in a direct West line to the South seas, styling the lands so described "the province of Carolina;" that on the thirtieth day of June, 1665, in the seventeenth year of his reign, the said King granted to the said Lords, proprietors a second charter, enlarging the bounds of Carolina, viz., from twenty-nine degrees of North latitude to thirty-six degrees, thirty minutes, and from those points on the sea coast West in a direct line to

the South seas; that seven of the said proprietors of Carolina sold and surrendered to George the Second, late King of Great Britain, all their title and interest in the said province, and the share of the remaining proprietor was separated from the King's, and allotted to him in the North part of North Carolina; that Carolina was afterwards, about 1700, divided into provinces, called North and South Carolina.

IV.

Although the proprietors named re-deeded the territories above described to George the Second, King of Great Britain, the above colony of South Carolina was nevertheless established under what was known as a royal grant as distinguished from a proprietary grant. Under the former grant the right of the soil and the jurisdiction over the territory remained in the crown, and the boundaries, though described in letters patent, were subject to alteration at the pleasure of the Crown. South Carolina then under the grants and in the manner described in paragraph III of this bill held and enjoyed considerable territories in America until the year 1732.

V.

That on June 9th, 1732, George the Second, "by the Grace of God, of Great Britain, France and Ireland, King, defender of the faith," in the fifth year of his reign, issued certain letters patent to "our right, trusty and well beloved John, Lord Viscount Percival, of our kingdom of Ireland, our trusty, and well beloved Edward Digby, George Carpenter, James Oglethorpe," and others who should be known by the name of "the Trustees for establishing the colony of Georgia in America."

VI.

Under these letters patent and under the authority still resting in King George the Second, a portion of what was originally the colony of South Carolina was taken from this colony and became from that time and ever more the "lands, country and territories" of the new colony of Georgia, with the exception of such territory as was subsequently granted by the State of Georgia to the United States of America, and which "lands, country and territories" so subsequently granted is not involved in this complaint.

VII

Your orator further shows that under said letters patent certain territory was granted to the province of Georgia, the terms of said grant being shown in the following language taken literally and accurately from said letters:

"Do give and grant to the said corporation, and their successors ----- of all those lands, country and territories situate, lying and being in that part of South Carolina, in America, which lies from the most northern part of a stream or river there, commonly called the Savannah, all along the sea coast to the Southward to the southern stream of a certain other great water or river called the Altamaha, and westwardly from the heads of the said rivers respectively in direct lines to the South Seas -----."

VIII.

That under these letters patent from King George the Second, the new colony of Georgia was established and the northern part of that stream or river, known as the Savannah, was made the northern, or rather the

eastern boundary of the colony of Georgia, and the southern, or rather the western boundary of the older colony of South Carolina. The colony of Georgia then went into possession of all these "lands, country and territories" and enjoyed and exercised, notoriously and adversely, control and jurisdiction over them, including the Savannah river to the northern or eastern side of said river, which was the northern or eastern bank thereof.

IX.

That this situation so continued until what was known as the War of the Revolution when what were known as the thirteen original colonies, by force of arms, separated themselves from the mother country, England, and later became under the articles of Confederation, The United States of America. South Carolina and Georgia then, as new and independent states, retained all of the territory which they held, owned and enjoyed under grants from the Crown of England, except such territories as they subsequently deeded to the United States Government and which territory is not involved in this complaint. It is, therefore, alleged that, after the independence of the United States of America had been established and recognized, the *northern part* of that stream or river known as the Savannah became the eastern boundary of the State of Georgia and the western boundary of the State of South Carolina. Georgia then as a state continued to hold peaceably, notoriously and adversely all that territory enjoyed as a colony and claimed and exercised control and jurisdiction over the soil to the northern or eastern bank of the river Savannah.

X.

Your orator further shows that the uppermost or the northern branch of the Savannah River at the confluence

of this river with what is known as the Seneca River, formerly known as the Keowee River, is known as the Tugalo River, which latter river in its upper passages above the point of its confluence with the Tallulah River, is known as the Chattooga River, which latter river touches the North Carolina line at a well established point.

XI.

Your orator further avers that whereas that stream whose *northern part* was designated as the boundary line between South Carolina and Georgia was referred to as the Savannah, this stream is composed of the streams heretofore mentioned, the Chattooga, Tugalo and Savannah Rivers, respectively, running from the North Carolina line down between Georgia and South Carolina until the waters are emptied into the Atlantic Ocean and that these streams are the streams meant and referred to in the original letters patent heretofore described, and that the northern or eastern part of these three streams respectively constitute the eastern boundary line of the State of Georgia as it has always existed since 1732 and so exists today.

XII.

That when the northern or eastern part of a stream is referred to or designated such language clearly means the northern or eastern bank of said stream and within such stream would be included the entire bed of said stream, including all islands, and all the waters flowing there through, thus making the eastern boundary of any territory adjacent to such a boundary line extend to the eastern bank of said stream at the ordinary mean water level of said stream.

XIII.

Your orator also shows that the exact boundary line between South Carolina and Georgia has always been an important question and is now becoming much more important. This stream dividing South Carolina and Georgia, particularly in its lower branches, is a large volume of water, containing many large valuable islands and there have been built in and across said streams various large dams of masonry in and upon which dams have been placed and erected machinery of considerable value. This development will continue to grow and this boundary stream has now and will have in the future placed within its waters large and valuable properties. It is, therefore, of the greatest importance to Georgia that this boundary line may be fixed and determined for all times. The question of taxation is a necessary and valuable right to any sovereign state and this question has already arisen and will continue to arise, corporations who own property within the waters of this river have claimed and will continue to claim that their properties are situated in South Carolina, if it suits their interest so to claim.

XIV.

Crimes have been committed and doubtless will be committed in the future upon the waters of this river and alleged criminals will claim that the act was committed either within the jurisdiction of Georgia or within the jurisdiction of South Carolina as it may suit their necessities.

XV.

South Carolina has claimed and will doubtless claim in the future that certain properties on this river are

within the territory and jurisdiction of the State of South Carolina and that certain crimes have been committed upon the territory and within the jurisdiction of its sovereignty. At this present time the State of South Carolina is in possession of certain territory of Georgia in the Savannah river and is attempting to exercise control, jurisdiction and the right of taxation over a portion of this river, claiming this right to the middle or thread of the stream, and is levying a tax on the property of The Georgia Railway & Power Company, a Georgia corporation, which has built valuable properties within this river. Georgia, on other hand, says that these improvements are within its territory and demands that taxes be paid to it. It is, therefore, very necessary that this boundary question be settled by this Honorable Court.

XVI.

It is apparent that this question has arisen repeatedly in the past and will continue to arise in the future, and that, therefore, a multiplicity of suits will result and for this reason, if for no other, the boundary line between Georgia and South Carolina should be permanently and authoritatively settled.

WHEREFORE, Your orator, being remediless in the ordinary tribunals of the land, brings this, its bill of complaint, in this court and specially waiving an answer under oath prays:

(1) That beginning at the North Carolina line it may be decreed by this court that the eastern boundary of the State of Georgia is the northern or eastern bank of the rivers Chattooga, Tugalo and Savannah at the ordinary mean water level of these rivers on their eastern banks.

(2) That your orator may have such other and further relief as the necessities of its case and the principles of equity demand.

(3) That the most gracious writ of subpoena directed to the State of South Carolina and to Hon. Robert A. Cooper, the Governor of said State, and to Hon. Sam'l H. Wolf, the Attorney-General of said State, may issue commanding them and each of them to be and appear in this Honorable Court on a day to be therein named and to abide the judgment of this court.

Clifford Walker

 Attorney-General of Georgia.

Post Office Address:
 Atlanta, Georgia.

Thos F. Green

Max Michael

 Of Counsel.

Post Office Address:
 Athens, Georgia.

STATE OF GEORGIA, }
 County of Fulton. }

Personally came before me, the undersigned, an officer of said state, authorized to administer oaths, Hugh M. Dorsey, who on oath says that he is the Governor of Georgia, and that he has read the foregoing bill and is familiar with the contents thereof and that the same is true to the best of his knowledge, information and belief.

Hugh M. Dorsey.

Sworn to and subscribed before me,

this 28 day of February 1919.

W. B. Harrison

W. P. Stah at Large

In the Supreme Court of the United States,

OCTOBER TERM, 1918.

NO. 32 ORIGINAL.

THE STATE OF GEORGIA,

Complainant,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

ANSWER TO ORIGINAL BILL IN CHANCERY.

SAMUEL M. WOLFE,

Attorney General,

For the State of

South Carolina,

Defendant.

CLIFFORD WALKER,

Attorney General,

Atlanta, Georgia.

THOMAS F. GREEN,

Athens, Georgia.

Counsel for Complainant.

To the Honorable, the Chief Justice and the Associate Justices
of the Supreme Court of the United States:

The answer of the State of South Carolina, one of the United States of America, pursuant to subpoena issuing from said honorable Court, to the Bill in Chancery, exhibited against said State on and in behalf of the State of Georgia, also one of the United States of America, by the Honorable Hugh M. Dorsey, Governor, and the Honorable Clifford Walker, Attorney General, saving at all times hereafter to herself, the said State of South Carolina, all manner of benefits of exception or

2 STATE OF GEORGIA *v.* STATE OF SOUTH CAROLINA.

otherwise that can or may be had or taken to such errors, uncertainties or imperfections as may exist in said Bill of Complaint, to so much thereof as defendant deems material, by his Excellency, Robert A. Cooper, Governor, and Samuel M. Wolfe, Attorney General, of said State of South Carolina, respondent, is as follows:

1. That the defendant has no knowledge or belief other than that based upon the allegation therein contained, and therefore for the purposes of this action, denies the allegations in paragraph ONE of the complaint.

2. That the defendant has no knowledge or belief other than that based upon the allegations therein contained, and therefore for the purposes of this action, denies the allegations in paragraph TWO of the complaint.

3. That in substance defendant admits the allegations of paragraph THREE of the complaint, with the following modifications:

That Charles the Second, King of Great Britain, on the thirtieth day of June, in the seventeenth year of his reign, granted to certain Lords-Proprietors therein named, their heirs and assigns, all that territory, or tract of ground situate in North America extending north and eastward as far as the north end of Carahtuke River or gullet, upon a straight westerly line to Wyonoahe Creek, which lies within or about the degrees of thirty-six and thirty minutes Northern latitude, and westerly in a direct line as far as the South Seas; and south and westward as far as the twenty-ninth degree of North latitude, inclusive; thence west, in a direct line to the South Seas, which territory was entered upon and taken possession of by the said Lords-Proprietors and called Carolina. That said grant carried with it all intervening territory whatsoever together with all ports, harbors, bays, rivers, soil, fields, woods, lakes, rights and privileges therein named.

That thereafter a portion of the aforesaid territory beyond the thirty-fifth degree of North latitude was allotted to one

of the eight Lords-Proprietors, and that portion remaining south and westerly as aforesaid, of said parallel of North latitude was retained by the seven remaining Lords-Proprietors absolutely and in 1729, the two provinces thus separated, were designated as North Carolina and South Carolina respectively.

Otherwise said allegations are specifically denied.

4. That defendant admits allegations in paragraph FOUR of the complaint, with the following modifications:

On the 26th day of July, in the third year of the reign of George the Second, King of Great Britain, and in the year of our Lord 1729, the heirs and legal representatives of all the said remaining seven grantees in conformity with an Act of Parliament entitled An Act for establishing an agreement with seven of the Lords-Proprietors of Carolina for the surrender of their title and interest in that province, to his Majesty, for and in consideration of the sum of twenty-two thousand, five hundred pounds, paid to said heirs by the agent of said king, sold and surrendered to his Majesty all their right of soil and privileges incident thereto, and made deed of indenture thereto which was duly enrolled in the Chancery of Great Britain and there remains in the Chapel of the Rolls. That afterward, his said Majesty, George the Second, appointed Robert Johnson, Esqr., to be Governor of the province of South Carolina, by commission under the Great Seal of the kingdom of Great Britain, authorizing the said Governor Johnson to grant lands within the said province.

That pursuant thereto, the said Governor Johnson asserted his jurisdiction over such area of territory as was included in the grant by King Charles the Second to the aforesaid Lords-Proprietors.

That saving and excepting with these modifications, the allegations therein contained are specifically denied.

5. That defendant admits the allegations contained in paragraph FIVE of the complaint, with the following modifications:

That afterwards, the Right Honorable Viscount Percival, the Honorable Edward Digby, the Honorable George Carpenter, James Oglethorpe, Esqr., with others, petitioned the lords of the committee of his Majesty's privy council for a grant of lands in South Carolina, for the charitable purpose of transporting necessitous persons and families from London to that province, there by their industry, to procure a livelihood, and for this purpose to be incorporated. That the lords of the said privy council referred the said petition to the board of trade, so called, of Great Britain, who on the 17th day of December, A. D. 1730, made report thereon and recommended that his Majesty would be pleased to incorporate the said petitioners as a charitable society and further recommended that his Majesty be pleased to grant said petitioners and their successors forever, "all that tract of land in his province of South Carolina lying between the Rivers Savannah and Alatamaha, to be bounded by the most navigable and largest *branches* of the Savannah, and the most southerly branch of the Alatamaha," and that they should be separated from the colony of South Carolina and be made independent thereof, save only in command of their militia. And that pursuant thereto, his Majesty, George the Second, did incorporate the said Lord Viscount Percival and others by the name of "The Trustees for establishing the Colony of Georgia, in America, with perpetual succession."

That saving and excepting with these modifications, the allegations of said paragraph are specifically denied.

6. That with the following modifications and addenda, the allegations of paragraph SIX are admitted:

That defendant alleges that the cession on the part of Georgia of a certain portion of that territory acquired under the letters-patent referred to in paragraph five herein, involved such territory as was prior to the Beaufort convention, a subject of controversy between the said State of Georgia and the State of South Carolina, and that the boundary line governing in said

cession on the east, was that fixed by said convention, and to this extent such matter is one pertinent to this action.

7. Defendant herein denies such allegations contained in paragraph SEVEN of the complaint as purports to be a "literal and accurate" transcript of said letters-patent, it being submitted that the language of said grant does not describe the lands, country and territory passing as that which lies "from the most northern part of a stream or river, etc.," but on the contrary the descriptive language of said grant literally and correctly transcribed is: "* * * seven undivided parts (the whole into eight equal parts to be divided) of all those lands, countries, territories situate, lying and being in that part of South Carolina in America which lies from the *most northern stream of a river there commonly called the Savannah*; all along the seacoast to the southward unto the most southern *stream* of a certain other great water or river called the Alata-maha, and westward from the heads of the said rivers respectively, in direct lines, to the South Seas, and all that spare circuit and precinct of land lying within said boundaries, etc, etc."

8. And answering allegations contained in paragraph EIGHT of the complaint, defendant respectfully shows that it was from the territory outlined in the foregoing paragraph rather than that purporting to be described in paragraph eight of the complaint, that the province of Georgia was established. And defendant denies that the colony of Georgia went into open, notorious and adverse possession of any territory or appurtenances other than that herein delimited or that South Carolina had any notice of any such adverse claim, but on the contrary asserted her own claim of possession to the middle thread of said stream known as the Savannah, as the common boundary. Defendant further denies that plaintiff has ever or does now exercise jurisdiction beyond the middle thread of the stream of the boundary rivers, Savannah, Toogaloo and the Chatooga, as hereinafter alleged.

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9. Defendant denies so much of paragraph NINE as alleges that Georgia as a State after the Revolution continued to hold peaceably, notoriously and adversely to the northern or eastern bank of the Savannah.

Defendant respectfully submits in answer to allegations contained in paragraph TEN of the complaint that it is the southern branch and not the northern branch as herein alleged, of the Savannah, that is known as the Tugaloo.

11. Defendant denies specifically the allegations contained in paragraph ELEVEN of the complaint.

12. Defendant denies specifically the allegations contained in paragraph TWELVE of the complaint.

13. Defendant denies so much of paragraph THIRTEEN of the complaint as is not hereinafter modified or specifically admitted and alleges that there has been no question as to the boundary line between the State of Georgia and the State of South Carolina since the adjustment of the controversy hitherto existing, in the Beaufort convention.

14. Defendant, answering allegations contained in paragraphs FOURTEEN, FIFTEEN and SIXTEEN of the complaint, respectfully submits that there is no longer need for controversy as to the boundary line between the State of Georgia and the State of South Carolina inasmuch as this matter was finally settled by the Beaufort convention.

15. Respondent further answering and by way of recapitulation submits that Charles the Second, King of Great Britain, by his letters-patent, granted unto certain Lords-Proprietors therein named, their heirs and assigns, on the 30th day of June, of the seventeenth year of his reign, and in A. D. 1663, all that province, territory or tract of ground situate in North America extending north and eastward as far as the north end of the Carahtuke River or gullet upon a straight westerly line to Wyonoahe Creek, which lies within or about the degrees of 36 and 30 minutes northern latitude and west in a direct line as far as the South Seas and south and westward as far as 29

degrees north latitude, inclusive, and west in a direct line as far as the South Seas, which territory was called Carolina, together with all ports, harbors, bays, rivers, soil, land, fields, woods, lakes and other rights and privileges therein named; that thereafter said Lords-Proprietors, grantees aforesaid, by virtue of said grant, entered upon and took possession of said territory and established within the same many settlements and erected therein posts of defense.

16. That seven of the said Proprietors of Carolina sold and surrendered to George the Second, then King of Great Britain, all their title and interest in the said province and the share of the remaining proprietor was allotted to him in that portion, which, subsequent to the division of Carolina into two provinces, was called North Carolina; the remaining portion called South Carolina, being the exclusive property of the crown.

17. That afterwards, on the 9th day of June, 1732, King George the Second, by his letters-patent or royal charter under the Great Seal of Great Britain incorporated certain petitioners by the name of the trustees, for the establishing of the Colony of Georgia in America with perpetual succession and did by the said letters-patent give and grant in free and common socage all those lands, countries and territories situate, lying and being in that part of South Carolina in America which lay from the most northern stream of a river commonly called the Savannah, thence along the seacoast to the southward unto the most southern branch of a certain other great river called the Alatomaha, and westward from the heads of the said rivers respectively, in direct lines to the South Seas.

18. That thereafter, to wit, on the sixth day of August, 1754, his Majesty, George the Second, constituted and appointed John Reynolds, Esquire, to be Captain General and Commander-in-Chief in and over said Colony of Georgia in America, with the following boundaries: Lying from the most northernly stream of a river commonly called Savannah, all along the seacoast to the southward end of the most southern

stream of a certain other great river called the Alatomaha and westward from the heads of the said rivers in straight lines to the South Seas.

19. That afterwards, to wit, from the year 1775 to the year 1783 open war existed between the Colonies of South Carolina and Georgia and other Colonies constituting the United States on the one part and his Majesty, George the Third, King of Great Britain, on the other part, and on the third day of September, in the year of our Lord 1783, a definite Treaty of Peace was signed and concluded at Paris by and between certain authorized commissioners on the part of the said belligerent powers, which was afterwards duly ratified and confirmed by the said two respective powers and by the first article of said treaty his Britanic Majesty acknowledged the sovereignty and independence of the American Colonies aforesaid.

20. That in the year 1782, as the result of the assertion of certain claims by the State of Georgia, a dispute arose between said State and the State of South Carolina concerning the boundary line between said two States, and the State of South Carolina in consequence thereof petitioned the Congress of the United States for a hearing and determination of the differences and disputes subsisting between said State and the State of Georgia, agreeably to the Ninth Article of the Articles of Confederation and that said Congress thereupon on the same day did resolve that the lawful agents of said respective States should convene and arrive at an amicable adjustment of these differences as to the boundary.

21. That of this resolve, due notice was served upon the State of Georgia by serving its Legislature with an attested copy of said petition of the State of South Carolina and said resolve of Congress.

22. That on the first day of September, 1786, said authorized agents from the State of South Carolina and the State of Georgia respectively, in pursuance of the order of Congress, appeared before its session and produced their credentials,

which were read and then recorded, together with the Acts of their respective Legislatures, and these Acts and credentials authorized said agents to settle and compromise all the differences and disputes aforesaid as well as to appear and represent the said States respectively before any tribunal that might be created by Congress for that purpose agreeably to the said Ninth Article of the Confederation. And in conformity to the powers aforesaid, said Commissioners of the said respective States of South Carolina and Georgia afterwards on the 28th day of April, in the year of our Lord 1787, met at Beaufort, in the State of South Carolina, and then and there entered into, signed and concluded a Convention between the said respective States, by the first article of which Convention it was agreed that the most northern branch or *stream* of the River Savannah from the sea or mouth of such stream to the fork or confluence of the rivers then called Tugaloo and Keowee; and thence the most northern branch or stream of the River Tugaloo to its intersection with the northern boundary line of South Carolina if said branch or stream of the River Tugaloo extended so far north, reserving all the islands in said Rivers Savannah and Tugaloo to the State of Georgia, etc. And by the third article of the Convention aforesaid it was agreed by the State of Georgia that thereafter no claim would be asserted by said State to any *lands* northward or northeastward of the boundary above established, but relinquished and ceded to the State of South Carolina all the right, title and claim which the said State of Georgia had in or to the said lands. That the said State of Georgia did also declare that it would at all times thereafter ratify and confirm all and whatsoever the said Commissioners or a majority of them representing the said State at the Convention aforesaid did or should do in adjudging the premises and that the said action would be forever binding on said State.

23. That thereafter, to wit, on the 28th day of April, 1788, in the Senate-House of the General Assembly of the State of South Carolina, an Ordinance was passed ratifying and con-

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firming the Convention between the States of South Carolina and Georgia concluded at Beaufort on the 26th day of April, 1787, establishing the boundary between the two States of Georgia and South Carolina as aforesaid. That on February 1, 1788, the General Assembly of the State of Georgia ratified the Treaty of Beaufort aforesaid fixing the boundary between the two States of Georgia and South Carolina.

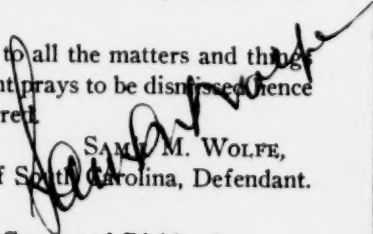
24. That subsequent to the conventional agreement, to wit, on the ninth day of August, in the year of our Lord one thousand seven hundred and eighty-seven, the delegates of the said State of South Carolina in Congress moved that the acts of said Convention be ratified and confirmed and that the lines and limits therein adopted be thereafter taken and received as the boundary between the said States of South Carolina and Georgia, which motion was by the unanimous vote of Congress committed and the same Convention was thereupon entered of record upon the Journals of Congress.

25. That the boundary line between the State of Georgia and the State of South Carolina has accordingly been from said date of the ratification of the Beaufort Convention recognized and acquiesced in by the State of South Carolina and the State of Georgia as follows: From the most northern stream or branch of the river known as the Savannah at its entrance into the ocean to the confluence of the Tugaloo and Seneca (formerly Keowee), reserving all the islands in the said Rivers Tugaloo and Savannah River to Georgia, and from the confluence of the said Tugaloo and Seneca River up the most northern branch or stream of the said Tugaloo River, namely, the Chatooga River, to the North Carolina line on the 35th degree of north latitude, the line being low watermark at the *southern* shore of the most northern stream of said rivers where the middle of the river is broken by islands and the middle thread of the stream where the rivers flow in one stream or volume.

26. That since the date of the Beaufort Treaty and its ratification, the States of South Carolina and Georgia respectively have recognized the dividing or boundary line as being that set

out in the foregoing paragraph as conforming as nearly as possible to the line agreed on in the Beaufort Convention. This was the language of Section 18 of the Code of 1861, of the State of Georgia, the complainant herein, and has been the language reiterated and repeated in every subsequent code of laws of said State of Georgia up to and inclusive of the Code of 1911 (See Section 17), as well as the language of the successive codes of the State of South Carolina, the defendant, for a like period. That for just so long, the State of Georgia, the complainant herein, has acquiesced in and recognized this as the true and accepted boundary in all questions of jurisdiction and the Courts of said State have so held and taken cognizance; that complainant has for just so long yielded without protest to the State of South Carolina, the respondent or defendant herein, the right of assessing and collecting taxes upon this basis of apportionment, on hydroelectric power sites, industries and bridges spanning said rivers forming the boundary line. That the terms of the Beaufort Treaty have been so interpreted by the Courts of the United States in numerous cases and such interpretation or construction is *res judicata*. And that to disturb such construction would be in violation of the covenants of treaty and would deprive the State of South Carolina, the defendant herein, of her just, legal and vested rights and title asserted and possessed, openly, notoriously and peaceably thereunder since the date of said treaty and its ratification.

Having thus made full answer to all the matters and things contained in the Bill, this defendant prays to be dismissed hence with his costs in this behalf incurred.


SAMUEL M. WOLFE,
Attorney General, for the State of South Carolina, Defendant.

State of South Carolina, County of Richland.

Personally comes before me, the undersigned duly appointed and commissioned Notary Public for and in the State of South Carolina, authorized to administer oaths, Robert A. Cooper,

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who, on oath, says that he is the Governor of the State of South Carolina, the defendant herein, that he has read the foregoing answer to the Bill of Complaint by way of defense and that the matters alleged in said answer by way of defense are true.

Robert Cooper

Governor of the State of South Carolina.

Sworn to and subscribed before me this 11th day
of Sept. 1919.

M. J. Miller

Notary Public for S. C.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1919.

NO. 22, ORIGINAL, IN EQUITY.

STATE OF GEORGIA

Complainant

vs.

THE STATE OF SOUTH CAROLINA,

Respondent

REPLICATION.

REPLICATION OF THE STATE OF GEORGIA TO THE
ANSWER OF THE STATE OF SOUTH CAROLINA.

Clifford Walker,

Attorney General, State of Georgia,
Atlanta, Georgia.

Thos. F. Cross,

Of Counsel, State of Georgia,
Athens, Georgia.

IN THE SUPREME COURT OF THE UNITED
STATES, OCTOBER TERM, 1919.

THE STATE OF GEORGIA,
Complainant,

vs.

THE STATE OF SOUTH CAROLINA,
Respondent.

No. 22,

Original,

In Equity.

REPLICATION.

REPLICATION OF THE STATE OF GEORGIA TO
THE ANSWER OF THE STATE OF
SOUTH CAROLINA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

The State of Georgia, repliant, saving and reserving unto herself all advantages of exceptions to the insufficiencies of the answer of the State of South Carolina herein for replication thereunto says:

That she will aver and prove her bill of complaint in this cause to be true, certain and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue and insufficient to be replied to.

All of which repliant is and will be ready to aver and prove as this Honorable Court shall direct, and said State prays, as in and by her said original bill she has already prayed.

Clifford W. Walker

Attorney General, State of Georgia,
Atlanta, Georgia.

Thos. H. Green

Of Counsel, State of Georgia,
Athens, Georgia.



STATE OF GEORGIA v. STATE OF SOUTH
CAROLINA.

IN EQUITY.

No. 16, Original. Argued January 4, 5, 1922.—Decided January
30, 1922.

1. Under the Beaufort Convention of April 28, 1787, defining the boundary between South Carolina and Georgia on the Savannah River and tributaries, reserving islands to Georgia,—*Held*: (a) Where there are no islands in the boundary rivers, the line is on the water midway between the main banks when the water is at ordinary stage. P. 521. (b) Where there are islands, it is midway between the island bank and the South Carolina shore, with the water at ordinary stage. P. 522. (c) Islands in the Chattooga River, the "most northerly branch or stream" of the Tugaloo, apparently not known as the Chattooga at the time of the Convention, are reserved to Georgia as completely as those in the Savannah and Tugaloo proper. P. 522.
2. The general rule is that where a river, navigable or nonnavigable, is the boundary between two States, and the navigable channel is not involved, in the absence of convention or controlling circumstances to the contrary, each takes to the middle of the stream. P. 521.

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3. The location of the boundary under the above convention, held unaffected by the Thalweg or Main Navigable Channel doctrine, in view of the provision that each State shall have equal rights of navigation on the streams. P. 521.

ORIGINAL suit to define a boundary between States.

Mr. Geo. M. Napier, Attorney General of the State of Georgia, and *Mr. Thos. F. Green*, with whom *Mr. Seward M. Smith* was on the brief, for complainant.

Mr. S. M. Wolfe, Attorney General of the State of South Carolina, and *Mr. A. M. Lumpkin* for defendant.

MR. JUSTICE CLARKE delivered the opinion of the court.

The parties to this case agree: That the boundary line between the States of Georgia and South Carolina is the river Savannah from the sea to the junction of the Seneca (formerly Keowee) and the Tugaloo (formerly spelled Tugalo) rivers; that it continues thence northwesterly by the Tugaloo river to the junction of the Tallulah and Chattooga rivers, and thence by the Chattooga river to the 35th parallel of north latitude, which is the south boundary of North Carolina. But they differ as to the location of the boundary line in these three rivers, and the State of Georgia, by original bill, prays that the controversy be settled by a decree of this court.

The State of Georgia contends: That, where there are no islands in the rivers, the line between the two States is midway between the river banks, when the water is at its ordinary stage; that, where there are islands, this line deflects and follows the middle line of the most northerly branch or stream, where it runs between any island and the South Carolina shore; and it claims jurisdiction over all islands in all three boundary rivers.

South Carolina, on the other hand, admits in its answer that where there are no islands the line between the States is the "middle thread of the stream where the rivers flow

in one stream or volume," but at the bar and in its brief it is argued, strenuously, that the true line is the low water mark on the southerly or Georgia bank of each river. It also claims that where there are islands the line is at low water mark on the southerly bank of the most northerly stream or branch of the river, and, while conceding all the islands in the rivers Savannah and Tugaloo to Georgia, it denies the jurisdiction of that State over those in the Chattooga river.

Thus it will be seen that the controversy is limited to the determination: (1) Whether the boundary line shall be located midway between the banks of each river where there are no islands, or at low water mark on the Georgia shore; (2) Whether the location of the boundary line where there are islands in the rivers, is in the middle of the stream running between any island and the South Carolina shore, or at low water mark on the southern or island shore of such stream; and (3) Whether any islands there may be in the Chattooga river are within the territorial jurisdiction of Georgia.

The taxation of dams and hydro-electric plants, already constructed and hereafter to be constructed, in the boundary rivers, renders the decision of the questions involved of importance to the two States.

It is not necessary to recite or discuss the historic origin of the titles which the two contending States have to the territory comprised within their present boundaries, for it is stipulated that the rights of the parties are to be determined by the construction of the terms of a written convention or treaty, entered into on April 28, 1787, by commissioners appointed by the two States. This convention, entered into pursuant to the provisions of the Articles of Confederation of 1778, under which the States were then united for the purposes of government, having been executed at Beaufort, South Carolina, is designated in the record as the Beaufort Convention.

Only two articles of this Convention need be considered, and they are as follows:

"Art. I. The most northern branch or stream of the river Savannah, from the sea or mouth of such stream to the fork or confluence of the rivers now called Tugalo and Keowee; and from thence, the most northern branch or stream of the said river Tugalo, till it intersects the northern boundary line of South Carolina, if the said branch or stream of Tugalo extends so far north, reserving all the islands in the said rivers Savannah and Tugalo to Georgia; but if the head spring or source of any branch or stream of the said river Tugalo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the head spring or source of the said branch or stream of Tugalo river, which extends to the highest northern latitude, shall for ever hereafter form the separation limits and boundary between the states of South Carolina and Georgia.

"Art. II. The navigation of the river Savannah at and from the bar and mouth, along the northeast side of Cockspur island, and up the direct course of the main northern channel along the north side of Hutchinson's Island, opposite the town of Savannah, to the upper end of said island, and from thence up the bed or principal stream of the said river to the confluence of the rivers Tugalo and Keowee, and from the confluence up the channel of the most northern stream of Tugalo river to its source, and back again by the same channel to the Atlantic Ocean—is hereby declared to be henceforth equally free to the citizens of both states, and exempt from all duties, tolls, hinderance, interruption, and molestation whatsoever, attempted to be enforced by one state on the citizens of another; and all the rest of the river Savannah to the southward of the foregoing description, is acknowledged to be the exclusive right of the state of Georgia."

First. As to the location of the line where there are no islands. While the admission quoted from the answer of

South Carolina would be sufficient to justify locating the line, where there are no islands, in the "middle thread of the stream where the rivers flow in one stream or volume," nevertheless the earnestness with which the contention for the low water mark on the Georgia shore is argued constrains us to consider the question further.

That the admission in the answer was not made inadvertently is conclusively shown by the fact that the General Assembly of South Carolina, in 1852, by resolution, appearing in the record, declared: That the Beaufort Convention defines the boundary between the two States; that the terms of the first article of that convention "construed by the undisputed principles of international and common law, fix, as the limit of the respective jurisdictions of the two States, . . . the thread or middle of the most northern branch or stream of the rivers Savannah and Tugaloo, where these rivers have more than one branch or stream, and the thread or middle of these rivers where there is but one branch or stream," and that the courts, the legislature and the departments of the government of the State have uniformly given to and acquiesced in this construction of the Convention.

A like declaration appears in the "Code of the Statute Law of South Carolina," adopted in 1861 in which the line where there are no islands is described as located at the "middle thread of the stream where the rivers flow in one stream or volume."

With this construction of Article I of the Convention, by the courts, general assembly and heads of departments of South Carolina, we fully agree.

The express reservation of the islands to Georgia and the placing of the boundary line in the most northerly branch of the Savannah and then of the Tugaloo river up to the "northern boundary of South Carolina," makes it clear that where there are islands in the river the line must be between them and the South Carolina shore, for

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otherwise the Georgia islands would be within the State of South Carolina. While it is true that the line, where there are no islands, is not specifically located by the Convention at the "thread or middle of the stream," neither is it, in terms, placed at the low water mark on the Georgia bank. However, the general rule is that where a river, navigable or non-navigable, is the boundary between two States, and the navigable channel is not involved, in the absence of convention or controlling circumstances to the contrary, each takes to the middle of the stream (*Handly's Lessee v. Anthony*, 5 Wheat. 374, 379; Hall, International Law, 6th ed., 123; Creasy First Platform of International Law, § 231), and therefore in this case the conclusion of the General Assembly of South Carolina in 1852 and in 1861, as we have quoted it, was clearly the correct one.

We conclude that where, in any of the boundary rivers here involved, there are no islands the location of the boundary line between the two States is the thread of the river—the middle line of the stream—regardless of the channel of navigation, the precise location to be determined when the water is at its ordinary stage, "neither swollen by freshets nor shrunk by drought." *Trustees of Hopkins Academy v. Dickinson*, 9 Cush. 544, 552.

Second. As to the location of the boundary line "where the most northern branch or stream" flows between an island or islands and the South Carolina shore.

Obviously such a stream may be wide and deep and may contain the navigable channel of the river, or it may be narrow and shallow and insignificant in comparison with the adjacent parts of the river. But such variety of conditions cannot affect the location of the boundary line in this case, because, by Article II of the Convention, equal and unrestricted right to navigate the boundary rivers is secured to the citizens of each State, irrespective of the location of the navigable channel with respect to the boundary line.

Thus, Article II takes out of the case any influence which the Thalweg or Main Navigable Channel Doctrine (*Iowa v. Illinois*, 147 U. S. 1; *Arkansas v. Tennessee*, 246 U. S. 158, 169, 170, 171) might otherwise have had upon the interpretation to be placed on Article I, by which the location of the line must be determined, and leaves the uncomplicated case of a boundary stream between two States quite unaffected by other considerations.

Thus again we have the case of a stream for a boundary between two States and with the precise location of the boundary line unaffected by the Thalweg Doctrine, or by other circumstances, and again the rule must be applied that the division line is midway between the banks of the stream,—here between the island bank on the one side and the South Carolina bank on the other,—its precise position to be determined when the water is at its ordinary stage.

Third. As to the islands in the Chattooga River.

Article I, as quoted, makes it plain that the commissioners executing the Convention of Beaufort intended to provide that the most northern branch of the river which they knew as the Tugaloo, as far northerly as its intersection with the northern boundary of South Carolina, if it extended so far north, should be the boundary line between the two States. It is now known that the most northern branch of that river extends as far north as the south boundary line of North Carolina (the 35th parallel of north latitude) and beyond that the controversy in this case does not extend. The fact that this "most northerly branch or stream of the Tugaloo" has come to be known as the Chattooga in that part of it northerly of the junction of the rivers now known as the Tullulah and Chattooga, neither of which appears by this record to have been known or named at the time the Convention was executed, cannot change the rights of the parties to the Convention, in the islands in that part of

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the stream. The Chattooga is but the extension of the Tugaloo,—the northern branch or stream of that river—and the fact that it is called Chattooga cannot affect the jurisdiction of Georgia over “all the islands in the said rivers Savannah and Tugalo” to which State they are specifically reserved by the Convention. The islands in the Chattooga River, as well as those in the Savannah and Tugaloo, were reserved to Georgia by the Convention.

Thus we conclude: (1) Where there are no islands in the boundary rivers the location of the line between the two States is on the water midway between the main banks of the river when the water is at ordinary stage; (2) Where there are islands the line is midway between the island bank and the South Carolina shore when the water is at ordinary stage; and (3) That islands in the Chattooga River are reserved to Georgia as completely as are those in the Savannah or Tugaloo rivers.

Counsel may present a decree, within thirty days, to carry into effect these conclusions of the court, with or without a commission to locate and monument the boundary line as they may be advised. The costs of suit will be equally divided between the two States.
